



# भारत का राजपत्र The Gazette of India

प्राधिकार से प्रकाशित

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सं. 40] नई दिल्ली, सितम्बर 28—अक्तूबर 4, 2014, शनिवार/आश्विन 6—आश्विन 12, 1936

No. 40] NEW DELHI, SEPTEMBER 28—OCTOBER 4, 2014, SATURDAY/ASVINA 6—ASVINA 12, 1936

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके

Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)

PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं  
Statutory Orders and Notifications Issued by the Ministries of the Government of India  
(Other than the Ministry of Defence)

वित्त मंत्रालय

( वित्तीय सेवाएं विभाग )

( सतर्कता अनुभाग )

नई दिल्ली, 15 सितम्बर, 2014

**का.आ. 2601.**—विशेष न्यायालय (प्रतिभूति संव्यवहार अपराध विचारण) अधिनियम, 1992 की धारा 3 की उप-धारा (i) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्द्वारा, श्री संजय शोरे, आईसीएलएस (1997) का केन्द्रीय स्टाफिंग योजना के अंतर्गत वित्त मंत्रालय, नई दिल्ली के अधीन अभिरक्षक का कार्यालय, वित्तीय सेवाएं विभाग में 3.9.2014 के (अपराहन) से उनकी केन्द्रीय प्रतिनियुक्ति की शेष अवधि अर्थात् 2.12.2018 तक के लिए या अभिरक्षक के कार्यालय को बंद किए जाने तक या अगले आदेश तक, जो भी पहले हो, 37400—67000 रु. के वेतनमान + ग्रेड वेतन 8700 रु. में निदेशक के पद पर नियुक्त करती है।

[सं. 21/3/2006—सतर्कता (भाग-II)]

मृत्युंजय सिंह, अवर सचिव

MINISTRY OF FINANCE

(Department of Financial Services)

(VIGILANCE SECTION)

New Delhi, the 15th September, 2014

**S.O. 2601.**—In exercise of the powers conferred by sub-section (i) of Section 3 of the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992, the Central Government hereby appoints Sh. Sanjay Shorey, ICLS (1997) as Director in the pay scale of Rs. 37400—67000 + Grade Pay of Rs. 8700 w.e.f. 3.9.2014 (A/N) in the Office of the Custodian, Department of Financial Services under the Ministry of Finance, New Delhi under the Central Staffing Scheme for the balance period of his Central deputation i.e. up to 2.12.2018 or till the office of Custodian is wound up or until further orders, whichever event takes place earlier.

[No. 21/3/2006—Vig. (Part-II)]

MRITUNJAY SINGH, Under Secy.

**प्रधान मुख्य आयकर आयुक्त का कार्यालय, राजस्थान**

जयपुर, 22 सितम्बर, 2014

( सं. 11/2014-15 )

**का.आ. 2602.**—आयकर अधिनियम, 1962 के नियम 2 सी ए के साथ पठनीय आयकर अधिनियम, 1961 (1961 का 43 वां) की धारा 10 के खण्ड (23 सी) की उपधारा (vi) के द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए प्रधान मुख्य आयकर आयुक्त, राजस्थान, जयपुर एतद्वारा निर्धारण वर्ष 2013-14 एवं आगे के लिए कथित धारा के उद्देश्य से “मै. एन. एम. शिक्षा समिति, 236-237, जसवन्त नगर, खातीपुरा, जयपुर” को स्वीकृति देते हैं।

2. बशर्ते कि समिति आयकर नियम 1962 के नियम 2 सी ए के साथ पठनीय आयकर अधिनियम, 1961 की धारा 10 के उपखण्ड (23 सी) की उपधारा (vi) के प्रावधानों के अनुरूप कार्य करे।

[क्रमांक: प्रमुआआ/आअ(तक.)/जय/10(23सी) (vi)/2014-15/3980]

स्वतन्त्र कुमार, प्रधान मुख्य आयकर आयुक्त

**OFFICE OF THE PR. CHIEF COMMISSIONER OF  
INCOME TAX, RAJASTHAN**

Jaipur, the 22nd September, 2014

(No. 11/2014-15)

**S.O. 2602.**—In exercise of the powers conferred by sub-clause (vi) of clause (23C) of Section 10 of the Income-tax Act, 1961 (43 of 1961) read with rule 2CA of the Income-tax Rules 1962, the Pr. Chief Commissioner of Income-tax, Rajasthan, Jaipur hereby approves “M/s. N.M. Shiksha Samiti, 236-237 Jaswanta Nagar, Khatipura, Jaipur” for the purpose of said section for the A.Y. 2013-14 onwards, provided that the society conforms to and complies with the provisions of sub-clause (vi) of clause (23C) of Section 10 of the Income-tax Act, 1961 read with Rule 2CA of the Income-tax Rules, 1962.

[No. PCCIT/JPR/ITO(Tech.)/10(23C)(vi)/2014-15/3980]

SWATANTRA KUMAR, Pr. Chief Commissioner of  
Income Tax

जयपुर, 22 सितम्बर, 2014

( सं. 12/2014-15 )

**का.आ. 2603.**—आयकर अधिनियम, 1962 के नियम 2 सी ए के साथ पठनीय आयकर अधिनियम, 1961 (1961 का 43 वां) की धारा 10 के खण्ड (23 सी) की उपधारा (vi) के द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए प्रधान मुख्य आयकर आयुक्त, राजस्थान, जयपुर एतद्वारा निर्धारण वर्ष 2013-14 एवं आगे के लिए कथित धारा के उद्देश्य से “मै. श्री विनायक मिशन मेडिकल एण्ड ऐजुकेशन सोसायटी, 1, महावीर नगर, “A”, मुहाना रोड, मानसरोवर, जयपुर” को स्वीकृति देते हैं।

2. बशर्ते कि समिति आयकर नियम 1962 के नियम 2 सी ए के साथ पठनीय आयकर अधिनियम, 1961 की धारा 10 के उपखण्ड (23 सी) की उपधारा (vi) के प्रावधानों के अनुरूप कार्य करे।

[क्रमांक: प्रमुआआ/आअ(तक.)/जय/10(23सी) (vi)/2014-15/3981]

स्वतन्त्र कुमार, प्रधान मुख्य आयकर आयुक्त

Jaipur, the 22nd September, 2014

(No. 12/2014-15)

**S.O. 2603.**—In exercise of the powers conferred by sub-clause (vi) of clause (23C) of Section 10 of the Income-tax Act, 1961 (43 of 1961) read with rule 2CA of the Income-tax Rules 1962, the Pr. Chief Commissioner of Income-tax, Rajasthan, Jaipur hereby approves “M/s. Shri Vinayaka Mission Medical and Education Society, 1, Mahaveer Nagar, “A”, Muhana Road, Mansarover, Jaipur” for the purpose of said section for the A.Y. 2013-14 onwards, provided that the society conforms to and complies with the provisions of sub-clause (vi) of clause (23C) of Section 10 of the Income-tax Act, 1961 read with Rule 2CA of the Income-tax Rules, 1962.

[No. PCCIT/JPR/ITO(Tech.)/10(23C)(vi)/2014-15/3981]

SWATANTRA KUMAR, Pr. Chief Commissioner of  
Income Tax

जयपुर, 22 सितम्बर, 2014

( सं. 13/2014-15 )

**का.आ. 2604.**—आयकर अधिनियम, 1962 के नियम 2 सी ए के साथ पठनीय आयकर अधिनियम, 1961 (1961 का 43 वां) की धारा 10 के खण्ड (23 सी) की उपधारा (vi) के द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए प्रधान मुख्य आयकर आयुक्त, राजस्थान, जयपुर एतद्वारा निर्धारण वर्ष 2013-14 एवं आगे के लिए कथित धारा के उद्देश्य से “मै. जे. के. लक्ष्मीपत युनिवर्सिटी, लालिया का वास, पी.ओ. महापुरा, अजमेर रोड, जयपुर” को स्वीकृति देते हैं।

2. बशर्ते कि समिति आयकर नियम 1962 के नियम 2 सी ए के साथ पठनीय आयकर अधिनियम, 1961 की धारा 10 के उपखण्ड (23 सी) की उपधारा (vi) के प्रावधानों के अनुरूप कार्य करे।

[क्रमांक: प्रमुआआ/आअ(तक.)/जय/10(23सी) (vi)/2014-15/3982]

स्वतन्त्र कुमार, प्रधान मुख्य आयकर आयुक्त

Jaipur, the 22nd September, 2014

(No. 13/2014-15)

**S.O. 2604.**—In exercise of the powers conferred by sub-clause (vi) of clause (23C) of Section 10 of the Income-tax Act, 1961 (43 of 1961) read with rule 2CA of the Income-tax Rules 1962, the Pr. Chief Commissioner of Income-tax, Rajasthan, Jaipur hereby approves “M/s. J. K. Lakshmi Pat University, Laliya Ka Vas, P.O. Mahapura, Ajmer Road, Jaipur” for the purpose of said section for the A.Y. 2013-14 onwards, provided that the society conforms to and complies with the provisions of sub-clause (vi) of clause (23C) of Section 10 of the Income-tax Act, 1961 read with Rule 2CA of the Income-tax Rules, 1962.

[No. PCCIT/JPR/ITO(Tech.)/10(23C)(vi)/2014-15/3982]

SWATANTRA KUMAR, Pr. Chief Commissioner of  
Income Tax

जयपुर, 22 सितम्बर, 2014

( सं. 14/2014-15 )

**का.आ. 2605.**—आयकर अधिनियम, 1962 के नियम 2 सी ए के साथ पठनीय आयकर अधिनियम, 1961 (1961 का 43 वां) की धारा 10 के खण्ड (23 सी) की उपधारा (vi) के द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए प्रधान मुख्य आयकर आयुक्त, राजस्थान, जयपुर एतद्वारा निर्धारण वर्ष 2013-14 एवं आगे के लिए कथित धारा के उद्देश्य से “मै. बीटलस इन्टरनेशनल स्कूल, हैवेन्स गार्डन के पास, सूमेल रोड, आगरा रोड, जयपुर मोतीराज ऐजुकेशन एण्ड वेलफेयर सोसायटी द्वारा संचालित” को स्वीकृति देते हैं।

2. बशर्ते कि समिति आयकर नियम 1962 के नियम 2 सी ए के साथ पठनीय आयकर अधिनियम, 1961 की धारा 10 के उपखण्ड (23 सी) की उपधारा (vi) के प्रावधानों के अनुरूप कार्य करे।

[क्रमांक: प्रमुआआ/आअ(तक.)/जय/10(23सी) (vi)/2014-15/3983]

स्वतन्त्र कुमार, प्रधान मुख्य आयकर आयुक्त

Jaipur, the 22nd September, 2014

(No. 14/2014-15)

**S.O. 2605.**—In exercise of the powers conferred by sub-clause (vi) of clause (23C) of Section 10 of the Income-tax Act, 1961 (43 of 1961) read with rule 2CA of the Income-tax Rules 1962, the Pr. Chief Commissioner of Income-tax, Rajasthan, Jaipur hereby approves “M/s. Beetle’s International School, Near Heavens Garden, Sumel Road, Agra Road, Jaipur run by Motiraj Education and Welfare Society” for the purpose of said section for the A.Y. 2013-14 onwards, provided that the society conforms to and complies with the provisions of sub-clause (vi) of clause (23C) of Section 10 of the Income-tax Act, 1961 read with Rule 2CA of the Income-tax Rules, 1962.

[No. PCCIT/JPR/ITO(Tech.)/10(23C)(vi)/2014-15/3983]

SWATANTRA KUMAR, Pr. Chief Commissioner of  
Income Tax

जयपुर, 23 सितम्बर, 2014

( सं. 15/2014-15 )

**का.आ. 2606.**—आयकर अधिनियम, 1962 के नियम 2 सी ए के साथ पठनीय आयकर अधिनियम, 1961 (1961 का 43 वां) की धारा 10 के खण्ड (23 सी) की उपधारा (vi) के द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए प्रधान मुख्य आयकर आयुक्त, राजस्थान, जयपुर एतद्वारा निर्धारण वर्ष 2013-14 एवं आगे के लिए कथित धारा के उद्देश्य से “मै. सेंट मेरीस कॉन्वेंट स्कूल, लालसोट रोड, दौसा निर्मला शिक्षा संस्था द्वारा संचालित” को स्वीकृति देते हैं।

2. बशर्ते कि समिति आयकर नियम 1962 के नियम 2 सी ए के साथ पठनीय आयकर अधिनियम, 1961 की धारा 10 के उपखण्ड (23 सी) की उपधारा (vi) के प्रावधानों के अनुरूप कार्य करे।

[क्रमांक: प्रमुआआ/आअ(तक.)/जय/10(23सी) (vi)/2014-15/3984]

स्वतन्त्र कुमार, प्रधान मुख्य आयकर आयुक्त

Jaipur, the 23rd September, 2014

(No. 15/2014-15)

**S.O. 2606.**—In exercise of the powers conferred by sub-clause (vi) of clause (23C) of Section 10 of the Income-tax Act, 1961 (43 of 1961) read with rule 2CA of the Income-tax Rules 1962, the Pr. Chief Commissioner of Income-tax, Rajasthan, Jaipur hereby approves “M/s. St. Mary’s Convent School, Lalsot Road, Dausa run by Nirmala Shiksha Sanstha” for the purpose of said section for the A.Y. 2013-14 onwards, provided that the society conforms to and complies with the provisions of sub-clause (vi) of clause (23C) of Section 10 of the Income-tax Act, 1961 read with Rule 2CA of the Income-tax Rules, 1962.

[No. PCCIT/JPR/ITO(Tech.)/10(23C)(vi)/2014-15/3984]

SWATANTRA KUMAR, Pr. Chief Commissioner of  
Income Tax

मुख्य आयकर आयुक्त का कार्यालय, जोधपुर

जोधपुर, 23 सितम्बर, 2014

( सं. / 2014-15 )

**का.आ. 2607.**—आयकर अधिनियम, 1961 (1961 का 43 वां) की धारा 10(23 ग) के खण्ड (via) के साथ पठित आयकर नियमावली 1962 के नियम 2 ग ए द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए मुख्य आयकर आयुक्त, जोधपुर एतद्वारा “मै. शान्ति निकेतन एज्युकेशनल सोसायटी, वार्ड नं. 20, संजय चौक, तहसील भादरा” को उक्त धारा के प्रयोजनार्थ निर्धारण वर्ष 2013-14 से आगे तक निम्नलिखित शर्तों के अधीन अनुमोदित करते हैं।

1. कर निर्धारिती उसकी आय का प्रयोग अथवा उसकी आय का प्रयोग करने के लिए उसका संचयन पूर्णतः तथा अनन्यतः उन उद्देश्यों के लिए करेगा जिनके लिए इसकी स्थापना की गई। कर निर्धारिती सोसायटी द्वारा एक प्रतिबद्धता (अंडरटेकिंग) की गई है कि संस्था का कार्य केवल शिक्षा प्रसार ही होगा व इसके अलावा संस्था कोई कार्य नहीं करेंगे। संस्था को यह सुनिश्चित करना है कि दी गई अंडरटेकिंग का उल्लंघन न हो।
2. कर निर्धारिती उपर्युक्त कर निर्धारण वर्षों से संगत पूर्ववर्ती वर्षों की किसी भी अवधि के दौरान धारा 11 की उप-धारा (5) में विनिर्दिष्ट किसी एक अथवा एक से अधिक ढंग अथवा तरीकों से भिन्न तरीकों से उसकी निधि (जेवर-जेवाहिरात, फर्नीचर आदि के रूप में प्राप्त तथा अनुरक्षित स्वैच्छिक अंशदान से भिन्न) का निवेश नहीं करेगा अथवा उसे जमा नहीं करवा सकेगा।
3. यह आदेश किसी ऐसी आय के संबंध में लागू नहीं होगा, जो कि कारोबार से प्राप्त लाभ तथा अभिलाभ हो जब तक ऐसा कारोबार उक्त कर निर्धारिती के उद्देश्यों की प्राप्ति के लिए प्रासंगिक नहीं हो तथा ऐसे कारोबार के संबंध में अलग से लेखा पुस्तिकाएं नहीं रखी जाती हों।
4. कर निर्धारिती आयकर अधिनियम, 1961 के प्रावधानों के अनुसार अपनी आय विवरणी नियमित रूप से आयकर प्राधिकारी के समक्ष फाइल करेगा।

5. विघटन की स्थिति में इसकी अतिरिक्त राशियां और परिसंपत्तियां समान उद्देश्यों वाले धर्मार्थ संगठन को दे दी जाएगी और उसका कोई भी भाग संस्थान के किसी सदस्य को नहीं दिया जाएगा।
6. आयकर अधिनियम की धारा 10 (23 ग) (via) के साथ पठित 115खखग में परन्तुक 15 की शर्तों में अनाम दानों के संबंध में यह अनुमोदन लागू नहीं होगा।
7. यह अधिसूचना तब तक जारी रहेगी जब तक इसे वापस न लिया जाए।

[सं. मु.आ.आ./आ.अ.(तक.)/जोध./2014-15/1949]

एल. आर. सिंह, मुख्य आयकर आयुक्त

**OFFICE OF THE CHIEF COMMISSIONER OF  
INCOME TAX, JODHPUR**

Jodhpur, the 23rd September, 2014

(No. / /2014-15)

**S.O. 2607.**—In exercise of the powers conferred by clause (vi) of Section 10(23C)(via) of the Income-tax Act, 1961 (43 of 1961) read with rule 2CA of the Income-tax Rules 1962, I, the Chief Commissioner of Income Tax, Jodhpur hereby approve “Shanti Niketan Educational Society, Ward No. 20, Sanjay Chowk, Teh. Bhadra, Dist. Hanumangarh,” for the purpose of the said section for the assessment year 2013-14 onwards, subject to the following conditions:-

1. The assessee will apply its income, or accumulate for application wholly and exclusively to educational purpose only. The Society shall have to adhere to its under taking that the activities of the Society shall be confined only to educational purpose. The Institute shall do no other activity except education.
2. the assessee will not invest or deposit its funds (other than voluntary contribution received and maintained in the form of jewellery, furniture etc.) for any period during the previous years relevant to the assessment years mentioned above otherwise than in anyone or more of the forms or modes specified in sub-section (5) of section 11;
3. this order will not apply in relation to any income being profits and gain of business, unless the business is incidental to the attainment of the objectives of the assessee and separate books of accounts are maintained in respect of such business;
4. the assessee will regularly file its return of income before the income-tax authority in accordance with the provisions of Income-tax Act, 1961;
5. that in the event of dissolution, its surplus and the assets will be given to a charitable organization with similar objectives and no part of the same will go to any of the members of the

Institution.

6. The approval will not apply in relation to anonymous donations in terms of the fifteenth proviso to section 10(23C)(via) r. w.s. 115 BBC of the Act.
7. This notification will remain in force until it is withdrawn.

[No. CCIT/ITO(Tech.)/Jod./2014-15/1949]

L. R. SINGH, Chief Commissioner of Income Tax

**MINISTRY OF HEALTH AND FAMILY WELFARE**

(Department of Health and Family Welfare)

New Delhi, the 24th September, 2014

**CORRIGENDUM**

**S.O. 2608.**—In continuation to this Department's Notification No. U-12012/557/2014-ME(P.II) dated 1st July, 2014 and in exercise of the powers conferred by sub-section (2) of the Section 11 of the Indian Medical Council Act, 1956 (102 of 1956), the Central Government hereby makes the following further amendments in the First Schedule to the said Act, Namely :—

The name of University may be read as follows:

“Veer Kunwar Singh University, Ara, Bihar” instead of “Veer Kunwar Singh University, Sasaram, Bihar”

[No. U-12012/557/2014/ME(P-II)]

SUDHIR KUMAR, Under Secy.

**नागर विमानन मंत्रालय**

( एएआई अनुभाग )

नई दिल्ली, 30 सितम्बर, 2014

**का.आ. 2609.**—भारतीय विमानपत्तन प्राधिकरण अधिनियम, 1994 (1994 का 55) की धारा 3 के तहत प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्र सरकार, श्री अरुण कुमार, संयुक्त सचिव, नागर विमानन मंत्रालय को श्री एम. कन्नन, आर्थिक सलाहकार, नागर विमानन मंत्रालय के स्थान पर तत्काल प्रभाव से भारतीय विमानपत्तन प्राधिकरण के बोर्ड में अंशकालिक सदस्य के रूप में नियुक्त करती है।

[सं. एवी. 24015/5/2013-एएआई]

सतीश चन्द्र, अवर सचिव

**MINISTRY OF CIVIL AVIATION**

(AAI Section)

New Delhi, the 30th September, 2014

**S.O. 2609.**—In exercise of the powers conferred Under Section 3 of the Airports Authority of India Act, 1994 (No. 55 of 1994), the Central Government hereby appoints Sh. Arun Kumar, Joint Secretary in the Ministry of Civil Aviation, as part-time Member on the Board of Airports Authority of India vice Shri M. Kannan, Economic Advisor, Ministry of Civil Aviation, with immediate effect.

[No. AV.24015/5/2013-AAI]

SATISH CHANDER, Under Secy.



**श्रम और रोजगार मंत्रालय**

नई दिल्ली, 26 सितम्बर, 2014

**का.आ. 2610.**—केन्द्रीय सरकार, कर्मचारी राज्य बीमा अधिनियम, 1948 (1948 का 34) की धारा 91-क के साथ पठित धारा 88 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए भारत हैवी प्लेट्स एण्ड वेसेल्स लिमिटेड, विशाखापटनम के कारखानों/स्थापनाओं के नियमित कर्मचारियों को इस अधिनियम के प्रवर्तन से छूट प्रदान करती है। यह छूट, अधिसूचना जारी होने की तारीख से एक वर्ष की अवधि के लिए लागू रहेगी।

2. उक्त छूट निम्नलिखित शर्तों के अधीन है; अर्थात् :—

- (1) पूर्वोक्त स्थापना जिसमें कर्मचारी नियोजित हैं, एक रजिस्टर रखेगी, जिसमें छूट प्राप्त कर्मचारियों के नाम और पदनाम दिखाये जायेंगे;
- (2) इस छूट के होते हुए भी, कर्मचारी उक्त अधिनियम के अधीन ऐसी प्रसुविधाएं प्राप्त करते रहेंगे जिनको पाने के लिए वे इस अधिसूचना द्वारा दी गई छूट के प्रवृत्त होने की तारीख से पूर्व संदत्त अंशदानों के आधार पर हकदार हो जाते हैं;
- (3) छूट प्राप्त अवधि के लिए, यदि कोई अभिदाय पहले ही किए जा चुके हों, तो वे वापस नहीं किए जाएंगे;
- (4) उक्त कारखाने/स्थापना का नियोजक उस अवधि की बाबत जिसके दौरान उस कारखाने/स्थापना पर उक्त अधिनियम (जिसे इसमें इसके पश्चात् उक्त अवधि कहा गया है) प्रवर्तमान था ऐसी विवरणियां, ऐसे प्रारूप में और ऐसी विशिष्टियों सहित देगा जो कर्मचारी राज्य बीमा (साधारण) विनियम, 1950 के अधीन उसे उक्त अवधि की बाबत देनी अपेक्षित होती थीं;
- (5) निगम द्वारा उक्त कर्मचारी राज्य बीमा अधिनियम की धारा 45 की उप-धारा (1) के अधीन नियुक्त किया गया कोई सामाजिक सुरक्षा अधिकारी या निगम का इस निमित्त प्राधिकृत कोई अन्य पदधारी;
  - (i) धारा 44 की उप-धारा (1) के अधीन, उक्त अवधि की बाबत दी गई किसी विवरण की विशिष्टियों को सत्यापित करने के प्रयोजनार्थ; अथवा
  - (ii) यह अभिनिश्चित करने के प्रयोजनार्थ कि कर्मचारी राज्य बीमा (साधारण) विनियम, 1950 द्वारा यथा अपेक्षित रजिस्टर और अभिलेख उक्त अवधि के लिए रखे गये थे या नहीं; या
  - (iii) यह अभिनिश्चित करने के प्रयोजनार्थ कि कर्मचारी, नियोजक द्वारा दिये गए उन फायदों को, जिसके फलस्वरूप इस अधिसूचना के अधीन छूट दी जा रही है, नकद में और वस्तु रूप में पाने का हकदार बना हुआ है या नहीं; या

(iv) यह अभिनिश्चित करने के प्रयोजनार्थ कि उस अवधि के दौरान, जब उक्त कारखाने के संबंध में अधिनियम के उपबंध प्रवृत्त थे, ऐसे किन्हीं उपबंधों का अनुपालन किया गया था नहीं, निम्नलिखित कार्य करने के लिए सशक्त होगा:—

- (क) प्रधान या आसन्न नियोजक से अपेक्षा करना कि वह उसे ऐसी जानकारी दे जिसे उपरोक्त अधिकारी या अन्य पदधारी इस अधिनियम के प्रयोजनार्थ आवश्यक समझता है; अथवा
  - (ख) ऐसे प्रधान नियोजक के अधिभोगाधीन, किसी कारखाने, स्थापना, कार्यालय या अन्य परिसर में किसी भी उचित समय पर प्रवेश करना और उसके प्रभारी से यह अपेक्षा करना कि वह व्यक्तियों के नियोजन और मजदूरी के संदाय से संबंधित ऐसे लेखा, बहियां और अन्य दस्तावेज, ऐसे निरीक्षक या अन्य पदधारी के समक्ष प्रस्तुत करें और उनकी परीक्षा करने दें या ऐसी जानकारी दें जिसे वे आवश्यक समझते हैं; या
  - (ग) प्रधान या आसन्न नियोजक की, उसके अभिकर्ता या सेवक की, या ऐसे किसी व्यक्ति को, जो ऐसे कारखाने, स्थापना, कार्यालय या अन्य परिसर में पाया जाए, यह विश्वास करने का युक्तियुक्त कारण है कि वह कर्मचारी है, परीक्षा करना; या
  - (घ) ऐसे कारखाने, स्थापना, कार्यालय या अन्य परिसर में रखे गए किसी रजिस्टर, लेखा, बही या अन्य दस्तावेज की नकल तैयार करना या उद्धरण लेना;
  - (ङ.) यथानिर्धारित अन्य शक्तियों का प्रयोग करना।
- (6) विनिवेश/निगमीकरण के मामले में, प्रदत्त छूट स्वतः रद्द हो जाएगी और तब नए प्रतिष्ठान को छूट हेतु समुचित सरकार की अनुमति लेनी होगी।

[संख्या एस-38014/7/2012-एसएस-1]

सुभाष कुमार, अवर सचिव

**MINISTRY OF LABOUR AND EMPLOYMENT**

New Delhi, the 26th September, 2014

**S.O. 2610.**—In exercise of the power conferred by Section 88 read with Section 91-A of the Employees' State Insurance Act, 1948 (34 of 1948) the Central Government hereby exempts the regular employees of factories/establishments of Bharat Heavy Plates and Vessels Limited, Visakhapatnam from the operation of the said Act. The exemption shall be effective from the date of issue of notification for a period of one year.

2. The above exemption is subject to the following conditions namely :—

- (1) The aforesaid establishments wherein the employees are employed shall maintain a register showing the name and designations of the exempted employees’;
- (2) Notwithstanding this exemption, the employees shall continue to receive such benefits under the said Act to which they might have become entitled to on the basis of the contributions paid prior to the date from which exemption granted by this notification operates;
- (3) The contributions for the exempted period, if already paid, shall not be refundable;
- (4) The employer of the said factory/establishment shall submit in respect of the period during which that factory was subject to the operation of the said Act (hereinafter referred as the said period), such returns in such forms and containing such particulars as were due from it in respect of the said period under the Employees’ State Insurance (General) Regulations, 1950;
- (5) Any Social Security Officer appointed by the Corporation under sub-section (1) of Section 45 of the said ESI Act or other official of the Corporation authorized in this behalf by it, shall, for the purpose of :—
  - (i) Verifying the particulars contained in any returned submitted under sub-section (1) of Section 44 for the said period; or
  - (ii) Ascertaining whether registers and records were maintained as required by the Employees’ State Insurance (General) Regulations, 1950 for the said period; or
  - (iii) Ascertaining whether the employees continue to be entitled to benefits provided by the employer in cash and kind being benefits in consideration of which exemption is being granted under this notification; or
  - (iv) Ascertaining whether any of the provisions of the Act had been complied with during the period when such provisions were in force in relation to the said factory to be empowered to :
    - (a) require the principal or immediate employer to him such information as he may consider necessary for the purpose of this Act; or
    - (b) at any reasonable time enter any factory, establishment, office or other premises occupied by such principal or immediate employer at any reasonable time and require any person found in

charge thereof to produce to such inspector or other official and allow him to examine accounts, books and other documents relating to the employment of personal and payment of wages or to furnish to him such information as he may consider necessary; or

- (c) examine the principal or immediate employer, his agent or servant, or any person found in such factory, establishment, office or other premises or any person whom the said inspector or other official has reasonable cause to believe to have been an employee ; or
- (d) make copies of or take extracts from any register, account book or other document maintained in such factory, establishment, office or other premises,
- (e) exercise such other powers as may be prescribed.
- (6) In case of disinvestment/corporatization, the exemption granted shall become automatically cancelled and then the new entity will have to approach the appropriate Government for exemption.

[No. S-38014/7/2012-SS-I]

SUBHASH KUMAR, Under Secy.

नई दिल्ली, 19 सितम्बर, 2014

**का.आ. 2611.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक ऑफ बड़ोदा के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ सं. 281/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19.09.2014 को प्राप्त हुआ था।

[सं. एल-12012/284/99-आईआर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 19th September, 2014

**S.O. 2611.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 281/2004) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Ahmedabad as shown in the Annexure, in the Industrial Dispute between the management of Bank of Baroda and their workmen, received by the Central Government on 19.09.2014.

[No. L-12012/284/99-IR (B-II)]

RAVI KUMAR, Section Officer

**ANNEXURE****BEFORE THE CENTRAL GOVERNMENT  
INDUSTRIAL TRIBUNAL-CUM-LABOUR  
COURT, AHMEDABAD****Present :**

Binay Kumar Sinha, Presiding Officer  
CGIT-cum-Labour Court,  
Ahmedabad, Dated 2nd June, 2014

**Reference: (CGITA) No-281/2004**

Reference: (I.T.C) No-32/2000(old)

The Regional Manager,  
Bank of Baroda,  
Regional office, North Gujarat Zone,  
Opp. Income Tax office, Ashram Road,  
Ahmedabad (Gujarat) ...First Party

**And**

Their Workman  
Smt. Jayaben Hasmukhlal Acharya  
D/687/1, Priti Park,  
Ambika Nagar, Odhav,  
Ahmedabad (Gujarat) ....Second Party

For the First Party : Shri Kishor V. Gadhia,  
Advocate  
Shri Mahinder K. Patel,  
Advocate

For the Second Party : Shri J.D. Chalishajar,  
Advocate

**AWARD**

The Government of India/Ministry of labour, New Delhi vide its order No. 12012/284/99/IR(B-II) dated 28.02.2000, referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad(Gujarat) in respect of the matters specified in the Schedule:

**SCHEDULE**

“Whether the action of the management of Bank of Baroda in terminating/discontinuing Smt. Jayaben Hasmukhlal Acharya, Part time Sweeper, Odhav branch w.e.f. 30.06.1995 is legal and justified? If not, what relief the concerned workman is entitled to?”

2. The case of the workman as per statement of claim (Ext.2) is that she had applied for part time Sweeper in the Odhav branch of Bank of Baroda and the 1<sup>st</sup> party organisation accepted her application and she started work as part time sweeper from 11.12.1989 and worked up to 30.06.1995 and she was performing work of sweeping etc. from 7:30 a.m. to 12 a.m. and she was getting Rs. 175/- towards monthly wages. Her monthly wages was raised to Rs. 325/- She worked in odhav branch continuously for five years. Further case is that

she submitted application on 17.07.1995 to the 1<sup>st</sup> party organisation for regularisation of his service which was received on 18.07.1995. She was doing work without any complaint but she was not given appointment letter. She was being given monthly wages through vouchers she was demanding for regularisation in part time sweeping job then she was terminated by oral order on 30.06.1995 without giving notice or one month notice pay and retrenchment compensation and thus the 1<sup>st</sup> party management has contravened the provision of Section 25F of the I.D. Act. On these grounds, prayer is made that the action of oral termination from services is illegal, unjustified and that she be reinstated as regular Bank class (iv) staff and with full back wages and be given all the benefit of regular sub staff and to grant any other relief to which she is found entitled.

3. As against this the case of the 1<sup>st</sup> party inter alia as per written statement (Ext.,9) is that the reference is not maintainable and the workman has no valid cause of action, and she (S.P.) is not workman as defined under Section 2(s) of the I.D. Act. The 1<sup>st</sup> party has denied the averments made in the statement of claim. It is the case of the 1<sup>st</sup> party that the 2<sup>nd</sup> party Smt. Jayaben was engaged at Odhav branch to sweep the premises of the Bank as and when required for specific job and specific work and for that she was being paid Rs. 175/- per month. She used to work hardly two hours a day. Earlier, the carpet area of Odhav branch for cleaning purpose was 1200 sq. feet and in new premises where the said Branch was shifted, the cleaning area is about 6600 sq. feet. Therefore as per norms of the Bank, the full time sweeper Shri G.N. Patel was transferred from Asarva Branch to Odhav Branch on 22.06.1995. The 2<sup>nd</sup> party Smt. Jayaben was not appointed as per the recruitment rules, she did not fulfill the criteria and her name was not sponsored by the employment Exchange for part time sweeper. She was not appointed as per the recruitment rules of the bank. On these ground, the prayer is to dismiss the reference since the 2<sup>nd</sup> party is not entitled to any relief.

4. In view of the pleadings of the parties, the following issues are taken for determination:

**ISSUES**

- (i) Is the reference maintainable?
- (ii) Whether the 2<sup>nd</sup> party Smt. Jayaben has any valid cause of action in this case?
- (iii) Whether there exists relation of master and servant between the parties?
- (iv) Whether the 2<sup>nd</sup> party Smt. Jayaben has put in continuous part time service as claimed? Whether she completed 240 days' work in calendar year preceding her oral termination/discontinuation w.e.f. 30.06.1995?

- (v) Whether the action of the management of Bank of Baroda is legal and justified in terminating/discontinuing Smt. Jayaben Hasmukhlal Acharya from part time sweeper work?
- (vi) Whether the 2<sup>nd</sup> party is entitled to relief as claimed?

### FINDINGS

5. **ISSUE NO.(iii) & (iv) :** The 2<sup>nd</sup> party has submitted 12 documents as per list Ext.10. Ext.10/1 is Xerox copy of S/B A/C pass book in the name of the 2<sup>nd</sup> party Jayaben running in Odhav branch of Bank of India having A/c No. 5402 opened on 03.02.1990. The entries are from February 1990 and onward up to 09.07.1994. A perusal of entry go to show that monthly wages of Rs. 175/- per month was being deposited in her S/B pass book upto November,1992. Thereafter per month salary was raised and from December 1992 monthly wages of Rs. 325/- was being deposited till the last entry on 09.07.1994. So such pleading of the 2<sup>nd</sup> party is established that she was getting Rs. 175/- per month for part time cleaning work of Bank carpet area and that was raised to Rs. 325/- per month. The 1<sup>st</sup> party has not disputed that the 2<sup>nd</sup> party was not working as part time cleaner of bank premise of Odhav branch. It has also not been disputed that her monthly wages was raised from Rs. 175/- to 325/- . Ext.10/2 is Xerox copy of filled up application form in the printed application form of Bank of Baroda for lower grade post other than clerk of the 2<sup>nd</sup> party Smt. Jayaben dated 13.06.1994 applying for part time sweeper work at Odhav Branch. Ext.10/3 is Xerox copy of application dated 17.07.1995 of Smt. Jayaben addressed to Regional Manager, Bank of Baroda, Ahmedabad City, Region-1 , Ahmedabad. On the subject of appointment as part time sweeper works and its original copy was received with seal of Bank on 18.07.1995. Likewise Ext.10/4 is Xerox of her application dated 04.01.1996 . Ext. 10/5 is dated 24.05.1996 and Ext. 10/6 is her application dated 24.0.1996 to Regional Manager for part time appointment as sweeper high lighting that she has worked for more than 5 years as part time sweeper but appointment letter was not given. Ext. 10/8 is her application dated 20.01.1997 addressed to Regional manager, BOB, Ahmedabad for appointing her as part time sweeper in the bank incorporating her name, date of birth and working as part time sweeper from 11.12.1989 to 30.06.1995 continuously at Odhav branch of Bank of India. Ext.10/7 is Xerox copy of letter dated 02.08.1996 of senior Manager, Odhav Branch of Bank of Baroda addressed to the Assistant General Manager, BOB, ACH-1 on the subject request for employment in the Bank as a part time sweeper by Mrs. Jayaben H. Acharya. This letter corroborated statement of claim and Ext. 10/1 in toto that she was engaged as a sweeper at

Odhav branch from 11.12.1989 to 30.06.1995, she was paid from November 1989 to February-1992 a consolidated amount of Rs. 175/- per month and from November-1992 to June-1995 she was paid Rs. 375/- per month as advised vide your letter dated 24.12.1992. Ext. 10/9 is copy of demand notice given to the 1<sup>st</sup> party by Smt. Jayaben H. Acharya dated 27.08.1997. Ext. 10/10 is registration receipt and Ext. 10/11 is Xerox of Acknowledgement in token of receiving demand notice of (the 2<sup>nd</sup> party) Smt. Jayaben by the 1<sup>st</sup> party (management). Ext. 10/12 is copy of letter of Asst. General manager dated 07.07.1999 to A.L.C. (central) Ahmedabad in connection with this industrial dispute which was under conciliation.

6. The 2<sup>nd</sup> party Smt. Jayaben H. Acharya in her oral evidence (Ext.11) has supported her case in toto and stated that she did part time sweeper job at Odhav branch of bank of Baroda from 1989 to June 1995. Her such evidence is corroborated by the 1<sup>st</sup> party's own correspondence vide Ext.10/7 already discussed above. It has only come in her cross examination by the 1<sup>st</sup> party's lawyer that she was not given appointment letter. But in cross examination the 1<sup>st</sup> party has not gained anything to discredit her testimony of working as part time sweeper at odhav branch of BOB from November 1989 to 30.06.1995. On the other hand, the 1<sup>st</sup> party through oral evidence of its witness Thakorlal Jamnadas Shah (vide Ext.15) then senior branch manager Odhav branch has stated that Smt. Jayaben was casual employee and she used to sweep the bank premises. Since permanent sweeper was appointed then there was no work for her and that she was not recruited as per rules of the Bank. The evidence of the 1<sup>st</sup> party witness gather no much confidence in discarding the claim of workman Smt. Jayaben H. Acharya that she did not although worked as part time sweeper from November-1989 to June 1995. Rather documents of the 1<sup>st</sup> party Ext. 10/7 go to the root of the 1<sup>st</sup> party case to bely the bank's contention taken in W.s as well as in evidence of its witness (ext.15). On the other hand oral evidence of Jayaben (Ext.11) coupled with Ext.10 series documents particularly xerox copy of statement of pass book entry (Ext.10/1) and correspondence letter of Sr. Manager Odhav branch with Asst. G.M. Ahmedabad go to establish master and servant relation between the 1<sup>st</sup> party B.O.B. and the 2<sup>nd</sup> party(Smt. Jayaben since Smt. Jayaben was daily performing part time sweeping job and was getting monthly salary from employer (1<sup>st</sup> party) and more so her monthly salary was transferred per month in her S.B A/c (Ext.10/1) and there is catena of decision that part time worker also come under the definition of workman u/s. 2(S) of the I.D. Act.

7. Such argument of the 1<sup>st</sup> party as per written argument (Ext.19) Para 3 has no leg to stand that Smt. Jayaben was provided work as and when required for



specific period in view of Ext. 10/1 and Ext.10/7 supported by oral evidence of Smt. Jayaben (Ext.11). The appointment letter was not given to her by Bank of Baroda is not material for disproving the master and servant relation. On the other hand the written argument submitted on behalf of the 2<sup>nd</sup> party( Ext.18) is more convincing as per discussion and consideration of the evidence in the foregoing.

8. Thus I find and hold that there was relation of master and servant (employer and workman) relation between the 1<sup>st</sup> party and 2<sup>nd</sup> party. I further find and hold that 2<sup>nd</sup> party Smt. Jayaben H. Acharya had worked 240 days every year from date of her engagement as part time sweeper at Odhav branch of B.O.B. and has also completed 240 days' work in the calendar year preceding her termination/discontinuation w.e.f. 30.06.1995. So these issues are decided in affirmative in favour of the workman Smt. Jayaben H. Acharya. In this context, the case law reported in 2009 (1) G.L.H. 503 Supreme Court is also applicable as relied upon by the 2<sup>nd</sup> party.

9. **ISSUE NO. (v) :** As per findings to issue No. (iii) & (iv) in the foregoing, I am of the considered view and therefore find and hold that the management of Bank of Baroda without complying with the mandatory provisions of section 25F of the I.D. Act viz not issuing retrenchment notice not giving one month pay in lieu of notice., not paying retrenchment compensation to Smt. Jayaben H. Acharya have illegally terminated her from part time sweeping work in the premises of Odhav branch of bank of Baroda and so, the action of the 1<sup>st</sup> party is not legal and justified in terminating / discontinuing Smt. Jayaben H. Acharya from part time sweeper work w.e.f. 30.06.1995. She was working under control and supervision of employer and so she is entitled to claim protection of section 25F of I.D. Act (2009 (1) G.L.H. 503 Supreme Court (Supra).

10. **ISSUE Nos. (i) & (ii) :** In view of findings to Issue No. (iii), (iv) & (v) in the foregoing, I find and hold that the reference is maintainable and the 2<sup>nd</sup> party workman Smt. Jayaben Hasmukhlal Acharya has got valid cause of action to raise this industrial dispute.

11. **ISSUE No. (vi) :** The 2<sup>nd</sup> party workman has claimed for reinstatement and regularisation/permanently to sweeper job and with back wages. The claim of regularisation has to be defeated in view of the full bench decision of the Hon'ble Apex Court in the case of secretary, State of Karnataka and others vs. Umadevi and others (2006 II CLR 261). The case law of Halvad Nagar Palika vs. Jani Dipabhai (2003 II GHJ 397) not applicable in the instant case to discredit the claim of the workman Smt. Jayaben that she worked as part time sweeper for more than five years and that the employer bank was giving monthly consolidated salary

which was being deposited in her S/B A/C by employer and that she was not kept as daily waged worker. Likewise case law of Gujarat Housing Board vs. Meenakshiben Bhanushankar Bhatt (2005 (105) F.L.R. 1012 Gujarat H.C is also not applicable because the workman Sm. Jayaben after termination on 30.06.1995 started agitating the matter challenging her termination and there was no delay of 5 years as per facts of the given case laws. The Judgment of the Apex Court in Civil Application No. 559 of 2009 dated 02.02.2009 is not applicable in the instant case when the relation of employer and employee is established and the employee's action in terminating Smt. Jayaben is held illegal. More so, the facts of the given case law are as to treating the respondent's No. 1 as an approved Assistant Teacher. On the other hand the case law relied upon by the lawyer of the 2<sup>nd</sup> party Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Supreme Court case 324 is as to issue appointment as a teacher in the primary school and so not much helpful to decide the issue in the instant case to what relief the workman Smt. Jayaben H. Acharya is entitled when her termination/discontinuation from part time sweeping work has been held illegal as per findings to issue No. (v) in the foregoing and she is entitled to claim the protection of section 25F of the I.D. Act. But in view of case law of senior superintendent Telegraph (traffic) Bhopal vs. Santosh Kumar Seal and others (2010 III CLR 17) where in it has been held by their Lordship of the Hon'ble Supreme Court (Division Bench) "grant of reasonable compensation to the workman instead of reinstatement and back wages in case of termination of service is found illegal will sub serve the ends of justice." I find that the 2<sup>nd</sup> party workman Smt. Jayaben H. Acharya is not entitled for reinstatement to part time sweeper work with or without back wages. But she certainly is entitled for reasonable compensation from the 1<sup>st</sup> party/- Considering the tenure of her part time service in the Odhav branch of Bank of India. She is awarded lumpsum compensation of Rs. 50,000/- (Rupees Five Thousand Only) and the 1<sup>st</sup> party (management of Bank of Baroda) is directed to pay the compensation within two months of receipt of copy of award failing which the amount of compensation will carry interest @ 9% P.A.

The reference is allowed with cost of Rs. 50,000/-

This is my award.

BINAY KUMAR SINHA, Presiding Officer

नई दिल्ली, 19 सितम्बर, 2014

**का.आ. 2612.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सेंट्रल बैंक ऑफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों

के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ सं. 1027/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19.09.2014 को प्राप्त हुआ था।

[सं. एल-12012/126/95-आईआर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 19th September, 2014

**S.O. 2612.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 1027/2004) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Ahmedabad as shown in the Annexure, in the Industrial Dispute between the management of Central Bank of India and their workmen, received by the Central Government on 19.09.2014.

[No. L-12012/126/95-IR (B-II)]

RAVI KUMAR, Section Officer

### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present....

Binay Kumar Sinha, Presiding Officer,  
CGIT-cum-Labour Court,  
Ahmedabad, Dated 26<sup>th</sup> May, 2014

**Reference: (CGITA) No-1027/2004**

Reference: (I.T.C) No-44/1996(old)

Reference Adjudication Order No. L-12012/126/95-IR(B-II)

Regional Manager,  
Central Bank of India,  
Namindas Chambers, Dhibar Road,  
Rajkot (Gujarat)

...First Party

**And**

Their Workman  
Shri Bharat B. Parmar,  
Shamyuvi Society, Street-2,  
Near Suryamukhi Hanuman,  
Dedukea Naka,, Behind Gurukul,  
Rajkot (Gujarat)

...Second Party

For the First Party : Shri Hitesh D. Kathrotia,  
Advocate (given proxy to  
appear on behalf  
Shri D.D. Chhaya, Advocate  
vide (Ext.74)

For the Second Party :- Shri Murtuja Husen  
H. Sanghariat, Advocate

### AWARD

The Government of India/Ministry of labour, New Delhi vide its order No. 12012/126/95/IR(B-II) dated 30.09.1996/16.10.1996, referred the dispute for adjudication to the Industrial Tribunal, Rajkot(Gujarat) in respect to the matters specified in the Schedule:

### SCHEDULE

“Whether the action of the Regional Manager, Central Bank of India, Rajkot in terminating/ discontinuing/ not taking on duties of Shri B.B. Parmar, Driver w.e.f. 31.07.1990 valid, just and legal? If not to what relief the workman is entitled to and what direction are necessary in the matter?”

2. The case of the 2<sup>nd</sup> party B.B. Parmar as per statement of claim (Ext.7) is that he was engaged as driver of Regional Manager Mr. V.R.Dalal of Central Bank of India, Rajkot. He was continuously paid wages/salary from the allowance paid by Bank in the name of the Regional Manager, Rajkot through Banker cheque and said cheque were given to him by Regional Manager for encashment. Thereafter he was receiving the salary directly from the Bank. He served as driver of Regional Manager's car provided by Bank without any complaint till April 1990. Thereafter regional Manager Mr. Sethana offered salary of May, 1990 to him from his personal accounts which was refused by him. But it was incited to him to accept salary from his personal account. Then the Bank manager deposited his salary of May 1990, June 1990 and July 1990 in his (workman) Bank S/B A/c from personal account of A.R.M, Rajkot He made protest to A.R.M. and thereafter he was not allowed to join duty as driver from 31.07.1990 and his services were terminated illegally without serving notice, or one month notice pay and retrenchment compensation. Further case is that he (workman) was receiving salary and travelling allowances was also directly given to him by Bank for out station duty. He was maintaining log book of (car) kept therein, the car was maintained by him and salary was paid by Bank and so there was relation of master and servant. No written order of termination was given rather he was orally terminated by Asst. Regional Manager Rajkot Mr. Sethna. The duty of driver is being taken by new person which is still continuing. The 1<sup>st</sup> party has violated the provision of section 25F of the I.D. Act. On these grounds prayer is made for reinstatement with full back wages and treating him in continuous service and for cost of litigation and for other reliefs to which he is found entitled.

3. As against this the case of the 1<sup>st</sup> party inter alia as per written statement (Ext.8) is that the reference is not maintainable, the 2<sup>nd</sup> party has no valid cause of action, there was no relation of master and servant between the 1<sup>st</sup> party and the 2<sup>nd</sup> party. The averments of the statement of claim parawise have been denied statin that those are

untrue statements. It is the case of the 1<sup>st</sup> party that the 2<sup>nd</sup> party Shri Bharat B. Parmar was never employed by the Bank, he was not given any appointment letter/order. The 2<sup>nd</sup> party was engaged as personal driver of Bank Manager and the salary was paid by Bank manager from the allowances received by Manager from Bank. On these scores, prayer is to dismiss the reference since the 2<sup>nd</sup> party (Shri Bharat B. Parmar) is not entitled to any relief.

4. As per rival contention in the pleadings the following issues are taken for determination :

### ISSUES

- (I) Is the reference maintainable?
- (II) Whether the 2<sup>nd</sup> party (Bharat B. Parmar) has valid cause of action to raise disputes?
- (III) Whether the 2<sup>nd</sup> party Shri Bharat B. Parmar was engaged/appointed by the 1<sup>st</sup> party Central Bank of India as driver of the Bank's owned car? Or whether he was engaged as personal driver of Asst. Regional Manager, Rajkot?
- (IV) Whether the relation of the master and servant exist between the 1<sup>st</sup> party Bank and 2<sup>nd</sup> party B.B. Parmar?
- (V) Whether the action of the Regional manager of the 1<sup>st</sup> party Bank is valid, just and legal in terminating/discontinuing/not taking on duties of Shri B.B. Parmar w.e.f. 31.07.1990?
- (VI) Whether the 2<sup>nd</sup> party (Shri B.B. Parmar) is entitled for reinstatement as driver of Bank's car with back wages?
- (VII) To what relief the workman is entitled to and what directions are necessary in the matter?

### FINDINGS

5. **ISSUE NO. (iii) & (iv):-** The 2<sup>nd</sup> party B.B. Parmar has deposed in oral evidence vide Ext.11 in support of case and has also submitted Xerox copy of 70 documents with list Ext.10 which are Bankers cheque in the name of S.M. Shah, Regional Manager indicating the amounts towards salary and car washing charges for his driver. The Bankers cheque are also directly in the name of Shri Bharat B. Parmar, driver towards his salary, car washing charges, T.A. bills amount for his out station journey carrying Regional Manager for tour etc. The original pass book S.B A/c of Bharat B. Parmar having Account No. 20280 of Central Bank of India, R.M.O., Rajkot is Ext.38. Xerox copies of Banker's cheques for the period from 1986,87,88,89 and 90 are marked Exts. 12 to 37 and 39 to 71. The driver Shri B.B. Parmar in his evidence has stated that he worked as driver continuously from 1985 to 31.07.1990. He claims that his salary was paid by Bank owned Ambassador Car No. 4396 which was allotted to Regional Manager of Bank at Rajkot. He also has to go

for outstation duty by driving car and he was being paid additional T.A. D.A. by the Bank. He was also maintaining log book kept in the car and was writing in the log book. He was also given debit vouchers of his name and amount mentioned in the voucher was credited in his Bank's S/B A/C. He was given three pairs of uniform and charges of uniforms was paid by Bank. In cross-examination by the 1<sup>st</sup> party's lawyers he fairly admitted that no appointment order was given to him by Bank, there was no any advertisement for vacancy of driver in Bank and he was not interviewed nor he gave any examination and he was not given letter of appointment by the Bank. From examining the mode of payment of salary etc. to the 2<sup>nd</sup> party Shri B.B. Parmar, it appears that till April 1987 the amount of salary and allowances were given to B.B. Parmar by Regional Manager and the amount was being reimbursed by R.M./A.R.M. used to reimburse the salary other charge through Bankers cheque in his the R.M./A.R.M. used to reimburse the salary and other charge through Bankers cheque in is his name. But thereafter mode of payment was changed from May, 1987 and onward and the payment was made in the name of Shri Bharat B. Parmar directly by Bank. This mode of payment directly in the name of the 2<sup>nd</sup> party Shri B.B. Parmar up to April 1990 speaks a volume as to relation of master and servant between the 1<sup>st</sup> party and the 2<sup>nd</sup> party. More so, the oral and documentary evidence adduced on behalf of the parties go to prove more than 240 days work as workman driver of the 1<sup>st</sup> party in calendar year preceding his alleged discontinuation/ termination from 31.07.1990.

6. On behalf of the 1<sup>st</sup> party no any witness has been examined. Only some documents with a list Ext.73 has been submitted. Ext .73/1 is letter dated 26.05.2000 (confidential) of Zonal office central Bank of India, Ahmedabad addressed to Shri R.S Shah, Regional Manager, Rajkot by which Shri Shah have been allowed to engage personal driver for the car provided by Bank and fixing of remuneration of personal driver to be paid from time-to-time and also other payments to be made to them if their services are utilised for out of station duties. Through this letter information was asked urgently in format (1) Name of personal driver (2) working as personal driver (3) Remuneration being paid per month (4) other charges paid from 01.04.1999 to 31.03.2000 and 01.04.2000 to 31.05.2000-batta for out station duties others if any. Ext. 73/2 is extract of Regulation Para 26 (13) speaks-Driver's employed by the bank will be available to all Top Executives and Zonal Manager, Asst. General Manager and Chief Manager having bank's car may employ their personal drivers for which they would be entitled to reimbursement of salary paid by them to drivers/cleaner subject to the limits as decided by the Bank on production of receipt. Ext. 73/3 is circular dated 25.08.2003 of central Bank of India on the subject

reimbursement of payment made by the Executive to their personal drivers –indicating payment in grade wise cities limit of salary per month car washing allowances etc. Ext. 73/4 is circular dated 07.06.1995 towards revised limits of remuneration w.e.f. 01.06.1995. Ext. 73/5 is circular regarding revised remuneration of personal drivers w.e.f. 01.09.1993. From perusal of these documents at Ext. 73 it is obvious that Bank's top executives and Zonal Manager, Asst. G. Manager, Chief Manager have been given clearance to keep personal driver of their choice and what they pay to their personal driver according to limit which are from time to time revised they are to reimburse from bank.

7. So considering all these evidences oral and documentary adduced on behalf of the 2<sup>nd</sup> party workman/driver and the documentary evidence of the 1<sup>st</sup> party Bank it is clear that up to April 1987 as per mode of payment to Shri B.B. Parmar was as that of personal driver of the Regional Manager, Rajkot as reimbursement was made in the name of Regional Manager, Rajkot but thereafter payment of monthly remuneration towards salary, T.A. D.A. washing charges etc. were being paid to him in his name by the Bank through Bankers cheque, Vouchers etc. So though no appointment letter was given to Shri Bharat B. Parmar but direct mode of payment to him by Bank go to prove master and servant relation and working for more than 240 days in calendar year and also in calendar year preceding his alleged oral discontinuation from works. In that view of the mate retrenchment notice was must to be given to Shri Bharat B. Parmar by the 1<sup>st</sup> party(Bank) but was not complied with. The case law of Bank of Baroda vs. Ghemarbhai Harjibhai Rabari (2005 Lab I.C. 2279 Supreme Court) is applicable in the instant case to support the claim of the workman Shri Bharat B. Parmar.

8. Thus on consideration of the evidence and material in the foregoing, I am of the considered view and therefore find and hold that though Shri Bharat B. Parmar was not appointed by the 1<sup>st</sup> party Central Bank of India as driver of the Bank's owned car but he was also not treated as personal driver of Bank's executive Asst. Regional Manager, Rajkot, rather by own action of the 1<sup>st</sup> party Bank in directly making payment of monthly salary T.A.D.A. and also depositing salary in his S.B. A/C clearly go to connect relation of master and servant between the parties and so their exist relation of master and servant between the 1<sup>st</sup> party and the 2<sup>nd</sup> party workman Shri Bharat B. Parmar. So Issue Nos. (iii) and (iv) are decided accordingly in favour of the 2<sup>nd</sup> party.

9. **ISSUE NO. (v) :** In view of the findings to issue Nos. (iii) & (iv) in the foregoing, I find and hold that the workman Shri B.B. Parmar had completed 240 days' work in calendar year preceding his oral termination/discontinuation w.e.f. 31.07.1990. So, the 1<sup>st</sup> party employer was duty bound to give retrenchment notice or

one month notice pay and retrenchment compensation under the provision of section 25F of the I.D. Act, 1947. So the action of the 1<sup>st</sup> party is illegal, unjustified and not proper in discontinuing/terminating/ not taking on duties of Shri Bharat B. Parmar as driver of Bank's owned car w.e.f. 31.07.1990. This issue is answered in negative against the 1<sup>st</sup> party.

10. **ISSUE NOS. (i) & (ii) :** The reference is maintainable and the 2<sup>nd</sup> party Shri Bharat B. Parmar has valid cause of action.

11. **ISSUE NOS. (vi) & (vii) :** Usually in the past in case of violation of the provision of Section 25F of the I.D. Act, the workman was being reinstated with percentage of back wages according to merit of each case. But now due to change of view of the Hon'ble Apex Court in Catena of decision that casual workers since do not hold a post as that of regularly appointed employee so instead of reinstatement they should be compensated reasonably. In the instant case, there is no scope of reinstatement of Shri Bharat B. Parmar because since after his discontinuation another person has been kept as personal driver of Regional Manager/Asst. Regional Manager, Rajkot under the scheme and the payment of remuneration to personal driver are being reimbursed by bank's executive. So, Shri Bharat B. Parmar cannot be reinstated by removing the new incumbent deployed as personal driver. More so, as per full bench decision of Umadevi case Shri Bharat B. Parmar cannot claim for regularisation merely on proof of master and servant relation. Rather as per case law of senior superintendent Telegraph (Traffic) Bhopal vs. Santosh Kumar Seal and others (2010 III CLR 17 wherein it has been held by their Lordship of Hon'ble Supreme Court (D.B.) "grant of reasonable compensation to the workman instead of reinstatement and back wages in case of termination of service is found illegal will sub serve the ends of justice." So in the instant case the workman Shri Bharat B. Parmar is not found entitled for reinstatement and back wages rather he is found entitled for reasonable compensation which will subserve the ends of justice.

12. Considering the facts and circumstances of the case the workman who was driving the Bank's car allotted to R.M./A.R.M., Rajkot is awarded compensation of Rs. 1,50,000/- (Rupees One Lakh Fifty Thousand Only) due to discontinuing him from the services of driver.

The reference is accordingly allowed with cost of Rs. 5000/-

The 1<sup>st</sup> party is directed to pay the compensation of Rupees One Lakh Fifty Thousand only to Shri Bharat B. Parmar within two months of receipt of copy of award, failing which the amount of compensation will carry interest @ 9% per annum.

BINAY KUMAR SINHA, Presiding Officer



नई दिल्ली, 19 सितम्बर, 2014

**AWARD**

**का.आ. 2613.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय जीवन बीमा निगम के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ सं. 666/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19.09.2014 को प्राप्त हुआ था।

[सं. एल-17013/5/98-आईआर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 19th September, 2014

**S.O. 2613.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 666/2004) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Ahmedabad as shown in the Annexure, in the Industrial Dispute between the management of LIC of India and their workmen, received by the Central Government on 19.09.2014.

[No. L-17013/5/98-IR (B-II)]

RAVI KUMAR, Section Officer

**ANNEXURE**

**BEFORE THE CENTRAL GOVERNMENT  
INDUSTRIAL TRIBUNAL-CUM-LABOUR  
COURT, AHMEDABAD**

**Present :**

Binay Kumar Sinha,  
Presiding Officer, CGIT-cum-Labour Court,  
Ahmedabad, Dated 8<sup>th</sup> August, 2014

**Reference: (CGITA) No-666/2004**

The Divisional Secretary,  
LIC of India,  
Vadodara Division,  
7<sup>th</sup> Floor, Suraj Plaza-II, Sayajiganj,  
Vadodara (Gujarat) 390005

... First Party

**And**

Their Workman  
Through The General Secretary,  
Vadodara Divisional Insurance Employees  
Union, Vadodara,  
19 Soordham Atahar Society, Near Nalanda-3  
Vaghodia Road,  
Vadodara (Gujarat)-390005

...Second Party

For the 1<sup>st</sup> party : Ms. Meenaben Shah,  
Advocate

For the Second Party : None

The Central Government/Ministry of Labour, New Delhi vide order [No. L-17013/5/98-IR (B-II)] dated 19.04.1999 referred the dispute to Industrial Tribunal, Vadodara for adjudication in respect of the matters specified in the schedule:

**SCHEDULE**

“Whether the action of the management of LIC of India, Vadodara Division, Vadodara through the Divisional Manager, Vadodara in imposing the minor penalty of censure and wage cut for two days to approx. 200 employees for not attending HRD training, is legal justified and proper? If not, to what relief the Union/concerned employees are entitled to and what other directions are necessary in the matter?”

2. The parties to the case appear and filed respective pleadings viz. the 2<sup>nd</sup> party (union) its S/c (Ext.5) on 04.09.2000 and the management of the 1<sup>st</sup> party (L.I.C.) its W/s on 23.03.2001. The matter remain pending before Industrial Court, Baroda till the end of December-2010 and the matter was pending for leading evidence by the 2<sup>nd</sup> party but the 2<sup>nd</sup> party (Union) failed to lead evidence. There after the record was received back in this C.G.I.T. by the order of MOL. Fresh notice were issue to the parties. The 1<sup>st</sup> party appear through lawyer by putting its fresh power whereas the 2<sup>nd</sup> party (Union) failed to appear and to lead evidence. It appears that the 2<sup>nd</sup> party (Union) has slept over the matter and has got no interest to make contest. By pursis (Ext.21) the lawyer of the 1<sup>st</sup> party prayed for passing necessary order for disposing this reference case. On that pursis order was passed as to closure of rate of the 2<sup>nd</sup> party to lead evidence and that record was put up for award.

3. In facts and circumstance of the case, there is no justification for carrying on adjournments in this case. Right of the 2<sup>nd</sup> party to lead evidence have already been close as such there is no merit in this reference and so the terms of reference as per schedule is answered in favour of the management of the 1<sup>st</sup> party L.I.C. of India justifying its action in imposing minor penalty of censure and wage cut for two days to approx. 200 employees for not attending HRD training. So the union/concern employees are not entitled to any relief in this case.

Accordingly the reference is dismissed. No order of cost.

BINAY KUMAR SINHA, Presiding Officer

नई दिल्ली, 19 सितम्बर, 2014

**का.आ. 2614.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कांडला पोर्ट ट्रस्ट के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के

बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ सं. 92/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19.09.2014 को प्राप्त हुआ था।

[सं. एल-37011/02/2011-आईआर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 19th September, 2014

**S.O. 2614.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 92/2011) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Ahmedabad as shown in the Annexure, in the Industrial Dispute between the management of Kandla Port Trust and their workmen, received by the Central Government on 19.09.2014.

[No. L-37011/02/2011-IR (B-II)]

RAVI KUMAR, Section Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

#### Present :

Binay Kumar Sinha,  
Presiding Officer, CGIT-cum-Labour Court,  
Ahmedabad, Dated 7<sup>th</sup> August, 2014

#### Reference: (CGITA) No-92/2011

The Chairman,  
Kandla Port Trust,  
Post Box No.-50,  
Gandhidham, Kutch (Gujarat) ... First Party

#### And

Their Workman  
Through The Vice President,  
Kandla Port & Dock SC/ST Employees Union,  
S.G.X. 36-37, Ward 2B,  
Adipur, (Kutch)-370205 ... Second Party

For the 1<sup>st</sup> party : Shri K.V.Gadhia, Advocate  
Shri M.K. Patel, Advocate

For the Second Party : None

#### AWARD

The Central Government/Ministry of Labour, New Delhi vide order [No. L-37011/02/2011-IR (B-II)] dated 22.11.2011 referred the dispute for adjudication in respect of the matters specified in the schedule :

#### SCHEDULE

“Whether the action of the management of Kandla Port Trust in non-payment of higher benefits to the

families of the deceased employees/workers of Cargo Handling Division, erstwhile Kandla Dock Labour Board, as per new GSLI scheme w.e.f. 01.05.2007 at par with K.P.T. workers, after merger of KDLB and KPT through settlement w.e.f. 24.01.2007 in the light of clause 5 of the said settlement and applicability of new GSLI scheme to KPT workers w.e.f. 01.05.2007 is justified? What remedy the beneficiaries are entitled to?”

2. Notice were issued to the parties. The 1<sup>st</sup> party appear through lawyer by executing Vakalatnama (Ext. 5) whereas the 2<sup>nd</sup> party failed the appear and to submit statement of claim. Several adjournments were granted for filing the statement of claim. The 2<sup>nd</sup> party appears to have lost interest. In such view of the matters. The terms of reference as per schedule is answered in the affirmative that the action of the management of Kandla Port Trust in non-payment of higher benefits to the families of deceased employees/workers of Cargo Handling Division erstwhile Kandla Dock Labour Board, as per new GLSI scheme w.e.f. 01.05.2007 at par with K.P.T. workers, after merger of KDLB and KPT through settlement w.e.f. 24.01.2007 in the light of clause 5 of the said settlement and applicability of new GSLI Scheme to KPT workers w.e.f. 01.05.2007 is justified. So, the workman/beneficiaries are not entitled to any remedy.

Accordingly, the reference is dismissed. No order of cost.

BINAY KUMAR SINHA, Presiding Officer

नई दिल्ली, 19 सितम्बर, 2014

**का.आ. 2615.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार देना बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ सं. 1057/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19.09.2014 को प्राप्त हुआ था।

[सं. एल-12012/384/96-आईआर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 19th September, 2014

**S.O. 2615.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 1057/2004) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Ahmedabad as shown in the Annexure, in the Industrial Dispute between the management of Dena Bank and their workmen, received by the Central Government on 19.09.2014.

[No. L-12012/384/96-IR (B-II)]

RAVI KUMAR, Section Officer

**ANNEXURE****BEFORE THE CENTRAL GOVERNMENT  
INDUSTRIAL TRIBUNAL-CUM-LABOUR  
COURT, AHMEDABAD****Present :**

Binay Kumar Sinha,  
Presiding Officer, CGIT-cum-Labour Court,  
Ahmedabad, Dated 17<sup>th</sup> July, 2014

**Reference: (CGITA) No-1057/2004****Reference: (I.T.C.) No-39/1997(old)**

Adjudication Order No. L- 12012/384/96-IR (B-II)

The Regional Manager,  
Dena Bank, Laxmi Chambers,  
1<sup>st</sup> Floor, Station Road,  
P.B. No. 16,  
Bhuj (Kutch) -370001

...First Party

**And**

Their Workman  
Sh. Mahendra I. Tilak,  
Dr. Mehta Street, Nagarchakla,  
Bhuj (Kutch)

...Second Party

For the First Party : None

For the Second Party : Shri Mahendra I. Tilak  
(2<sup>nd</sup> party himself)

**AWARD**

The Government of India/Ministry of labour, New Delhi vide its order No. L-12012/384/96-IR (B-II) dated 29.08.1997, referred the dispute for adjudication to Industrial Tribunal, Rajkot in respect of the matters specified in the Schedule :

**SCHEDULE**

“Whether the action of the management of Dena Bank, Bhuj in terminating instead of regularising the services of Sh. Mahendra I. Tilak w.e.f. 17.04.1996, who has worked as badli sepy with the management since 1985 on wards is legal and justified? If not, to what relief the said workman is entitled?”

2. The case of the 2<sup>nd</sup> party as per statement of claim (Ext.4) dated 15.06.1999 is he was engaged as badly sepy in the Darbargadh branch of Bank at Bhuj since 07.01.1985 and he was working as peon on permanent post. His name was sponsored by Employment Exchange in the year 1983 and on the basis his interview was conducted and he was successful in interview. Appointment letter as badly sepy was issued. He was working from 10:15 a.m. to 6:30 p.m. on the working days and he was getting daily rated wages of Rs .101/- seniority list was prepared by Bank and his name was

entered in the panel list and he worked continuously from 1985 to 1996. But he was illegally terminated from the services of badly sepy w.e.f. 25.04.1996 and in his place other person was engaged and thus bank has violated the provision of I.D. Act. The work of peon to which he was being performed in the bank is still continuing. Further case is that after the dispute was raised by him and reference was made for adjudication, the management of Bank engaged him for work in instalments from 08.09.1997 to 26.04.1999 and that he completed 240 days’ work in the year 1998. From 26.04.1999 he is completely unemployed. On these grounds prayer made that the action of Bank management in terminating him from 25.04.1996 is illegal and improper which is in contravention of Sections 25 A, G and H of I. D. Act. Further prayer is made for his reinstatement and back wages from 25.04.1996 and also to grant any other relief to which he is found entitled.

3. As against this the case of the 1<sup>st</sup> party (Dena Bank) pleading interlia in the written statement (Ext.6) dated 29.04.2000 is that the claim of the 2<sup>nd</sup> party is baseless, unfounded and the reference is not maintainable, the 2<sup>nd</sup> party has no cause of action to raise dispute against the bank. The averment of para 1 to 6 of the statement of claim are not true and denied and the 2<sup>nd</sup> party is put to strict proof to prove the same. It is not true that the Bank has terminated the services of the 2<sup>nd</sup> party w.e.f. 25.04.1996. 2<sup>nd</sup> party is not a permanent employee of Bank rather he is a badli sepy and he is on the panel list of Bank . Bank has not favoured anybody out of turn and it is not true that the bank has deprived legal right of the 2<sup>nd</sup> party. Bank has not violated any provisions of I.D. Act. 2<sup>nd</sup> party had made baseless allegations against bank that other person was engage on work after termination of the 2<sup>nd</sup> party. The 2<sup>nd</sup> party has himself admitted that Bank has given work even after present reference raised by him. It is denied that the 2<sup>nd</sup> party has completed 240 days in the year 1998. Since the 2<sup>nd</sup> party himself has admitted that Bank has given him the work even after present reference and so on this single count and ground reference of the 2<sup>nd</sup> party deserves to be dismissed. On these scores, prayer is made to dismiss the reference since the 2<sup>nd</sup> party is not entitled to any relief as claimed in para 7(1) and (2) of S/c.

4. As per rival contention of the parties, the following issues are taken for determination:

**ISSUES**

- (i) Is the reference maintainable?
- (ii) Has the 2<sup>nd</sup> party any valid cause of action to raise dispute?
- (iii) Whether the 2<sup>nd</sup> party completed 240 days’ work in calendar year preceding his termination w.e.f. 17.04.1996?

- (iv) Whether the 1<sup>st</sup> party (management of Dena Bank) has violated the provision of I.D. Act? Whether the action of the management of Dena Bank, Bhuj in terminating instead of regularising the services of Shri Mahendra I. Tilak w.e.f. 17.04.1996 who has worked as badli sepyo with the management since 1985 on wards is legal and justified?
- (v) Whether the 2<sup>nd</sup> party Mahendra I. Tilak is entitled to the relief as claimed?

### FINDINGS

5. **ISSUE NO. (iii) & (IV) :** The 2<sup>nd</sup> party had filed an application (Ext.9) for production of documents by the 1<sup>st</sup> party (Dena Bank). An order was passed by the tribunal on 23.06.2005 (Ext.10) directing the 1<sup>st</sup> party Dena Bank to produce 3 years' service record- muster roll, payment register, vouchers regarding the 2<sup>nd</sup> party preceding the date of termination and to submit the seniority list exhibited at the time of retrenchment of the 2<sup>nd</sup> party. Also directing to give names and to submit the record of the persons who are employed on the post of the 2<sup>nd</sup> party after his termination. Then on 13.12.2005 the 2<sup>nd</sup> party submitted his affidavit in lieu of examination in chief (Ext.11). At that time Shri Hitesh D. Kathrotia, Advocate was 2<sup>nd</sup> party's lawyer who subsequently retired from this case on 20.04.2011 (Ext.19) and thereafter the 2<sup>nd</sup> party did not engage any other lawyer on his behalf. However, the 1<sup>st</sup> party's lawyer could not turn up to cross examine the 2<sup>nd</sup> party on his affidavit (Ext.11). Then vide closing pursis Ext.12 of the 2<sup>nd</sup> party his evidence was closed on 27.02.2006 and the matter was being adjourned for evidence of the 1<sup>st</sup> party and the right to lead evidence by the 1<sup>st</sup> party was closed on 19.03.2009 vide order passed below Ext.14. The case record was pending before the state Industrial tribunal which was transferred back to this tribunal (CGIT-cum-Labour Court, Ahmedabad) by order of M.O.L., New Delhi and the record was received on 20.04.2011 and fresh notice (Ext.15) was issued to the parties.

6. Subsequently, the 1<sup>st</sup> party's lawyer Shri M.K. Paul appeared on 27.09.2011 and submitted application (Ext.21) for opening the right of the 1<sup>st</sup> party for cross examination of the 2<sup>nd</sup> party and to lead evidence and order was passed below Ext.21 allowing the prayer of the 1<sup>st</sup> party and 15.11.2011 was fixed for cross examination of the 2<sup>nd</sup> party. Again on adjournment application (Ext.22) matter was fixed for cross examination of the 2<sup>nd</sup> party on 01.12.2011, but P.O. had gone to Surat for urgent work and so 27.12.2011 was fixed for cross examination of the 2<sup>nd</sup> party. On 27.12.2011, 1<sup>st</sup> party and its lawyer Shri M.K. Paul was present for cross exam of 2<sup>nd</sup> party but 2<sup>nd</sup> party was not present and so 08.02.2012 was fixed for cross of workman (2<sup>nd</sup> party) on 07.02.2012 2<sup>nd</sup> party, Mahendra send an application Ext.23 through

registered letter to put the matter for order and did not appear on the fixed date 08.02.2012. Again last chance was given on 15.03.2012 to 2<sup>nd</sup> party Mahendra I. Tilak to present himself for cross examination by the lawyer of the 1<sup>st</sup> party on 12.04.2012. But on 12.04.2012 and 20.04.2012 P.O. was in camp court and do 08.08.2012 was fixed for cross examination of the 2<sup>nd</sup> party on his affidavit (Ext.11). On 08.08.2012 Shri M.K. Paul, Advocate for the 1<sup>st</sup> party (Dena Bank) was present in the court but 2<sup>nd</sup> party Mahendra I. Tilak did not attend the court for his cross examination and one more chance was given to Mahendra I. Tilak (2<sup>nd</sup> party) directing to be present on 25.09.2012 for cross examination. On 25.09.2012, the 1<sup>st</sup> party's lawyer Shri M.K. Paul was present in the court for cross of 2<sup>nd</sup> party Mahendra but he (Mahendra I. Tilak) did not present himself for cross. Then an application under order 16 rule 20 and order 17 rule 2/3 of C.P.C. was filed (Ext.24) and order was passed below Ext.24 that let it be kept on the record since the 2<sup>nd</sup> party is not keen to attend the court for his cross examination and the case was fixed for leading evidence by the 1<sup>st</sup> party. However, the 1<sup>st</sup> party also failed to lead oral evidence inspite of number of adjournment.

7. Thus, the situation in this reference case is that the 2<sup>nd</sup> party failed to attend the court on dates for his cross examination on affidavit (Ext.11) so the affidavit of Mahendra I. Tilak (S.P) Ext.11 has got no evidentiary value and so will be deemed to be expunged. Now situation is this that there is no oral evidence of the parties in support of pleadings. The 2<sup>nd</sup> party who brought this reference has failed to substantiate his statement of claim, (Ext.4) by oral evidence, likewise the 1<sup>st</sup> party failed to substantiate its contention of written statement. The pleadings of the parties are not substantive piece of evidence.

8. On behalf of the 2<sup>nd</sup> party 4 certificate dated 31.03.1986, 10.10.1990, 31.03.1992 and 21.07.1995 granted by branch manager of Darbangadh Chouk branch of Dena Bank have been filed that only go to show that Shri Mahendra I. Tilak has worked as Budli Sepoy in our branch on various occasions. This go to show that Mahendra was not working permanently rather his services were taken in absence of regular sub staff that remained on leave. So these certificates do not connect continuous and uninterrupted service of the 2<sup>nd</sup> party. His designation as budli sepyo speaks clearly that he was being engaged intermittently and for limited period, in absence of permanent staff.

9. The 2<sup>nd</sup> party Shri Mahendra I. Tilak remained playing hide and seek policy in not attending the court on dates for his cross examination and was in the habit of sending application/letters addressing to the tribunal by registered post praying for early hearing whereas a matter of fact he himself was avoiding to attend the court to prevent him from being cross examined for



testing his veracity in the affidavit (Ext.11) which is expunged due to his deliberate absent on dates. Thereafter on 17.06.2014 the 2<sup>nd</sup> party Mahendra filed some documents including list with endorsement that the 1<sup>st</sup> party lawyer is not available whereas on early occasions when 1<sup>st</sup> party's lawyer remained present on date 2<sup>nd</sup> party Mahendra was not giving his attendance by adopting hide and seek policy. The approved panel list (Xerox copy) only go to show that name of Mahendra was at Sl. No.4 for 09.DC, Bhuj, 10 Vijaynagar II. R.O. in General category. The 2<sup>nd</sup> party has failed to show that after his alleged termination on 24.04.1996 his junior or third person was deployed as budli sepyo for work at Darbangadh branch of Dena bank, Bhuj.

10. On the contrary the 2<sup>nd</sup> party's own admission at para 6 of the statement of claim gives a complete go bye to the dispute raised by the 2<sup>nd</sup> party Mahendra I. Tilak that he was terminated w.e.f. 24.04.1996. He admits that even after reference made by Central Government for adjudication he was given work by the 1<sup>st</sup> party Bank from 08.09.1997 to 26.04.1999. That goes to disprove as to his alleged termination on 24.09.1996 or w.e.f. 17.04.1996 as it is narrated in the terms of reference. That go to show that employer of the 2<sup>nd</sup> party was so generous that even reference pending he was engaged for works intermittently up to 26.04.1999. Though he claims that he completed 240 days' work in the year 1998 to which the 1<sup>st</sup> party has denied in w.s. (Ext.6) para -7. So there is no acceptable evidence on behalf of the 2<sup>nd</sup> party that he completed 240 days' work in the calendar year preceding his alleged termination on 25.04.1996 or in the year 1997, 1998 or 1999 during pendency of this reference case when he was engaged from 08.09.1997 to 26.04.1999 admitted by him at para-6 of statement of claim. More so, there is no scope for drawing adverse inference against the 1<sup>st</sup> party if it did not comply with direction of this tribunal in the order dated 23.06.2005 (Ext.10). On the contrary adverse inference has to be drawn against the 2<sup>nd</sup> party that he raised a false and baseless dispute against the 1<sup>st</sup> party Dena Bank that he was terminated w.e.f. 25.04.1996 whereas the real fact is that the 1<sup>st</sup> party Bank had engaged him for intermittent work up to 26.04.1999 and he never completed 240 days' work in calendar year. More so, I also find and hold that the 2<sup>nd</sup> party has failed to show that the 1<sup>st</sup> party has violated the provision of I.D. Act. In such view of the matter I further find and hold that the action of the management of Dena Bank, Bhuj in terminating instead of regularising the services of Shri Mahendra I. Tilak w.e.f. 17.04.1996 who has worked as budli sepyo with the management since 1985 onwards is legal and justified because the 2<sup>nd</sup> party never completed 240 days' work in calendar year and more so he was a daily rated budli sepyo engaged for work when requirement exist and he does not hold a post as that of

permanent/regular workman and even working as budli Sepoy since 1985 intermittently he did not acquire any right for regularisation through back door entry in regular cadre of sub staff. So issue No. (iii) is answered in negative against the 2<sup>nd</sup> party and Issue No. (iv) is answered in affirmative in favour of the 1<sup>st</sup> party.

11. **ISSUE NO. (i), (ii) & (v) :** The reference is not maintainable and the 2<sup>nd</sup> party has no cause of action in this case and so the 2<sup>nd</sup> party Shri Mahendra I. Tilak is not entitled to any relief in this case.

Accordingly the reference is dismissed. No order of any cost.

This is my award.

BINAY KUMAR SINHA, Presiding Officer

नई दिल्ली, 19 सितम्बर, 2014

**का.आ. 2616.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय जीवन बीमा निगम के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ सं. 665/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19.09.2014 को प्राप्त हुआ था।

[सं. एल-17013/6/98-आईआर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 19th September, 2014

**S.O. 2616.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 665/2004) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Ahmedabad as shown in the Annexure, in the Industrial Dispute between the management of LIC of India and their workmen, received by the Central Government on 19.09.2014.

[No. L-17013/6/98-IR (B-II)]

RAVI KUMAR, Section Officer

**ANNEXURE**

**BEFORE THE CENTRAL GOVERNMENT  
INDUSTRIAL TRIBUNAL CUM LABOUR  
COURT, AHMEDABAD**

**Present :**

Binay Kumar Sinha,  
Presiding Officer, CGIT-cum-Labour Court,  
Ahmedabad, Dated 8<sup>th</sup> August, 2014

**Reference: (CGITA) No-665/2004**

The Divisional Secretary,  
LIC of India,  
Vadodara Division,

7<sup>th</sup> Floor, Suraj Plaza-II, Sayajiganj,  
Vadodara (Gujarat) 390005 ...First Party

### And

Their Workman  
Through The General Secretary,  
Vadodara Divisional Insurance  
Employees Union- Vadodara,  
19 Soordham Atahar Society,  
Near Nalanda -3,  
Vaghodia Road,  
Vadodara (Gujarat)-390005 ...Second Party

For the 1<sup>st</sup> party : Ms. Meenaben Shah,  
Advocate

For the Second Party : None

### AWARD

The Central Government/Ministry of Labour, New Delhi vide order No. L-17013/6/98/(IR (B-II)) dated 19.04.1999 referred the dispute to Industrial Tribunal, Vadodara for adjudication in respect of the matters specified in the schedule:

### SCHEDULE

“Whether the demand of the union to restart the Guest House of Life Insurance Corporation of India, Vadodara Division situated at ‘Vaishali Society, Karelibaug, Baroda’ for the class-III & Class-IV employees of LIC of India is legal, proper and justified? If so, what relief the union is entitled to and what other directions are necessary in the matter?”

2. The parties to the case on receive of notice appeared and filed respective pleadings viz. the 2<sup>nd</sup> party (Union) its S/c (Ext.3) on 23.09.1999 and the management of the 1<sup>st</sup> party (L.I.C.) its W/s (Ext.7) on 21.02.2000 contending therein that the reference is not maintainable and the 2<sup>nd</sup> party is not entitled to any relief. The matter remained pending before the Industrial Court, Baroda till the end of December-2010 and the matter was being adjourn for their leading evidence by the 2<sup>nd</sup> party but the 2<sup>nd</sup> party failed to lead evidence, thereafter the record received back in this C.G.I.T. on transfer by MOL's order. Fresh notice were issued. The 1<sup>st</sup> party (management of L.I.C) appeared through lawyer by executing fresh power whereas the 2<sup>nd</sup> party (Union) failed to appear to lead evidence in this Tribunal. The lawyer of the 1<sup>st</sup> party filed pursis (Ext.27) on 04.08.2014 praying for disposing of the reference. An order was passed below as Ext. 27 as to closure of right to lead evidence and to put up the record for award.

3. The onus was upon the 2<sup>nd</sup> party (Union) to prove its claim its demand as per terms of reference but the 2<sup>nd</sup> party (Union) has failed to do so. The terms of reference as per schedule is answered in negative that the demand of the Union as per terms of reference is not legal, proper

and justified and the 2<sup>nd</sup> party (Union) is not entitled to any relief. So no any direction is necessary in the matter.

Accordingly the reference is dismissed. No order of cost.

BINAY KUMAR SINHA, Presiding Officer

नई दिल्ली, 19 सितम्बर, 2014

का.आ. 2617.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय जीवन बीमा निगम के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ सं. 650/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19.09.2014 को प्राप्त हुआ था।

[सं. एल-17012/61/96-आईआर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 19th September, 2014

S.O. 2617.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 650/2004) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Ahmedabad as shown in the Annexure, in the Industrial Dispute between the management of LIC of India and their workmen, received by the Central Government on 19.09.2014.

[No. L-17012/61/96-IR (B-II)]

RAVI KUMAR, Section Officer

### ANNEXURE

### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, AHMEDABAD

#### Present :

Binay Kumar Sinha,  
Presiding Officer, CGIT-cum-Labour Court,  
Ahmedabad, Dated 8<sup>th</sup> August, 2014

#### Reference: (CGITA) No-650/2004

The Divisional Secretary,  
LIC of India,  
Vadodara Division,  
7<sup>th</sup> Floor, Suraj Plaza-II, Sayajiganj,  
Vadodara (Gujarat) 390005 ...First Party

### And

Their Workman  
Through The Secretary,  
Bhartiya Mazdoor Sangh,  
Shastri Pole,  
Kothi Char Rasta,  
Vadodara (Gujarat)-390001 ...Second Party

For the 1<sup>st</sup> party : Ms. Meenaben Shah,  
Advocate

For the Second Party : None

### AWARD

The Central Government/Ministry of Labour, New Delhi vide order No. L-17012/61/96-(IR (B-II)) dated 05.09.1997 referred the dispute to Industrial Tribunal, Vadodara for adjudication in respect of the matters specified in the schedule:

### SCHEDULE

“Whether the action of the management of LIC of India in terminating the services of 8 workman Sh. S.V. Pote, B.K.K. Rajpriya, A.G. Shaikh A.R. Macchi, J.D. Makwana, V.C. Bulbule, P. Pandya, D.P. Makwana w.e.f. 31.07.1996 is justified? If not, to what relief the workman is entitled to?”

2. In response to the notice the parties to the reference appeared and filed respective pleadings viz the 2<sup>nd</sup> party (Union) its S/c (Ext.4) on 19.04.1997 and the management of 1<sup>st</sup> party (L.I.C.) its W/s. (Ext.6) on 11.08.1998. The 1<sup>st</sup> party had also produced documents as per list on 25.07.2000. The Union (2<sup>nd</sup> party) also demanded documents from the 1<sup>st</sup> party (L.I.C.) on 05.12.2000 and the 1<sup>st</sup> party submitted its reply and produced some documents on 29.04.2003. Thereafter the matter remained pending in the Court of Industrial Tribunal, Baroda for leading evidence by the Union/ 2<sup>nd</sup> party but for the period April-2003 to October-2009 the union nor any terminated employees remained present for their representation. The Industrial Court of Baroda issued again notice for intimation of hearing intimating dated 05.11.2011 but neither the Union nor any terminated employee appeared to lead evidence till the end of 2010 before the Industrial Court, Baroda. Thereafter the case record was received back in this C.G.I.T. as per the order of MOL. Again fresh notice were issued to the parties to appear and also notice to the 2<sup>nd</sup> party/Union to lead evidence but neither the Union nor the terminated 8 workmen has appeared to have any interest to the terms of reference as per schedule and are interested to contest this reference. So on the pursis (Ext.25) submitted by the 1<sup>st</sup> party on 04.08.2014 order has been passed as to closure of right of 2<sup>nd</sup> party to lead evidence and put up the record for award. Considering all the facts and circumstances of the case narrating above, it is held that this reference case is devoid of merit. As such the terms of reference as per schedule is answered in affirmative justifying the action of the management of L.I.C. in terminating the services of 8 workmen. The 2<sup>nd</sup> party Union/concern workmen are not entitled to any relief.

Accordingly the reference is dismissed. No order of cost.

BINAY KUMAR SINHA, Presiding Officer

नई दिल्ली, 19 सितम्बर, 2014

**का.आ. 2618.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कांडला पोर्ट ट्रस्ट के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ सं. 49/2010) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19.09.2014 को प्राप्त हुआ था।

[ सं. एल-37011/01/2010-आईआर (बी-II) ]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 19th September, 2014

**S.O. 2618.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 49/2010) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Ahmedabad as shown in the Annexure, in the Industrial Dispute between the management of Kandla Port Trust and their workmen, received by the Central Government on 19.09.2014.

[No. L-37011/01/2010-IR (B-II)]

RAVI KUMAR, Section Officer

### ANNEXURE

### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

#### Present :

Binay Kumar Sinha,  
Presiding Officer, CGIT-cum-Labour Court,  
Ahmedabad, Dated 5<sup>th</sup> August, 2014

#### Reference: (CGITA) No-49/2010

The Chairman,  
Kandla Port Trust,  
Post Box No.-50,  
Gandhidham, Kutch (Gujarat)

...First Party

#### And

Their Workman  
Through The General Secretary,  
Transport & Dock Workers Union,  
21, Yogesh Building, Plot No. 586,  
12-C, Gandhidham,  
Kutch-370201

...Second Party

For the 1<sup>st</sup> party : Shri K.V.Gadhia, Advocate  
Shri M.K. Patel, Advocate

For the Second Party : None

**AWARD**

The Central Government/Ministry of Labour, New Delhi vide order No. L-37011/01/2010-(IR (B-II)) dated 16.03.2010 referred the dispute for adjudication in respect of the matters specified in the schedule:

**SCHEDULE**

“Whether the action of the chairman, Kandla Port Trust, P.O. Box No. 50, Gandhidham in not paying Split Duty Allowance to the Para-Medical Staff of K.P.T. Hospital, Gandhidham is legal and justified? What relief the workman is entitled to?”

2. The parties were issued notice to appear and to submit the S/c and W/s respectively with documents. The 1<sup>st</sup> party appear through lawyer by executing Vakalatnama (Ext.5). But inspite of several notices issued from the Industrial Court, Gujarat as well as from this Tribunal, C.G.I.T.-cum-Labour Court, Ahmedabad after receiving case record on transfer by MOL's order, the 2<sup>nd</sup> party Union failed to make appearance and failed to submit statement of claim. It is upon the 2<sup>nd</sup> party Union to prove the case since raise dispute against the management of Kandla Port Trust. The 2<sup>nd</sup> party appears to have lost interest. In such view of the matter, the terms of reference as per schedule is decided in affirmative in favour of the management of Kandla Port Trust (the 1<sup>st</sup> party) that the action of Chairman, Kandla Port Trust, Gandhidham in not paying split duty allowance to the para medical staff of Kandla Port Trust Hospital, Gandhidham is legal and justified. The 2<sup>nd</sup> party Union/workman is not entitled to any relief.

Accordingly the reference is dismissed. No order of cost.

BINAY KUMAR SINHA, Presiding Officer

नई दिल्ली, 19 सितम्बर, 2014

**का.आ. 2619.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय जीवन बीमा निगम के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ सं. 673/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19.09.2014 को प्राप्त हुआ था।

[सं. एल-17011/15/97-आईआर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 19th September, 2014

**S.O. 2619.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 673/2004) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Ahmedabad as shown in the Annexure, in the

Industrial Dispute between the management of LIC of India and their workmen, received by the Central Government on 19.09.2014.

[No. L-17011/15/97-IR (B-II)]

RAVI KUMAR, Section Officer

**ANNEXURE**

**BEFORE THE CENTRAL GOVERNMENT  
INDUSTRIAL TRIBUNAL CUM LABOUR  
COURT, AHMEDABAD**

**Present :**

Binay Kumar Sinha,  
Presiding Officer, CGIT-cum-Labour Court,  
Ahmedabad, Dated 8<sup>th</sup> August, 2014

**Reference: (CGITA) No.-673/2004**

The Divisional Secretary,  
LIC of India,  
Vadodara Division,  
7<sup>th</sup> Floor, Suraj Plaza-II, Sayajiganj,  
Vadodara (Gujarat)-390005

...First Party

**And**

Their Workman  
Through The General Secretary,  
Vadodara Divisional Insurance  
Employees Union- Vadodara,  
19 Soordham Atahar Society,  
Near Nalanda-3,  
Waghodia Road,  
Vadodara (Gujarat)

...Second Party

For the 1<sup>st</sup> party : Ms. Meenaben Shah,  
Advocate

For the Second Party : None

**AWARD**

The Central Government/Ministry of Labour, New Delhi vide order No. L-17011/15/97/(IR (B-II)) dated 14.06.1999 referred the dispute to Industrial Tribunal, Vadodara for adjudication in respect of the matters specified in the schedule:

**SCHEDULE**

“Whether the action of the management of LIC of India in respect of the postings of Class III & Class IV employees on promotion made in the month of October 1997/November 1997 in contravention of the set convention rather unwritten policy adopted during the last 10 years amounts to any change in the conditions of service of the concerned employees as per provisions of Section 9-A of the I.D Act, 1947 or the said action of the management amounts to unfair labour practice’ as specified in the Fifth Schedule of I.D. Act, 1947? If so, what directions are to be issued to the management of LIC of India?”



2. Upon notice the parties appear and filed respective pleadings. The 2<sup>nd</sup> party (Union) filed S/c (Ext.4) whereas the management (1<sup>st</sup> party) filed its W/s (Ext.9). S/c was filed on 04.09.2000 whereas W/s was filed on 26.06.2001. The case remain pending in the Industrial Court, Baroda till the end of 2010 but the 2<sup>nd</sup> party (Union) did not adduce any evidence. There after case was received back on transfer in this C.G.I.T. as per the order of MOL. Fresh notice were issued to the parties, the 1<sup>st</sup> party through its lawyer appear and filed fresh Vakalatnama. But the 2<sup>nd</sup> party (Union) inspite of fresh notice from this court failed to appear whereas the matter remain pending for leading evidence by the 2<sup>nd</sup> party. Only pleading (S/c) is not substantive piece of evidence. The onus is upon the 2<sup>nd</sup> party (union) who made this reference to prove the claim as per terms of reference. The 2<sup>nd</sup> party has no interest to contest in this reference. A pursis (Ext.19) was filed on 04.08.2014 by the lawyer of the 1<sup>st</sup> party. Narrating about long absence of the 2<sup>nd</sup> party and as to having no interest in this reference. Order was passed closing right of the 2<sup>nd</sup> party to lead evidence and the matter to be put up for award.

3. In the facts and circumstances of the case, the terms of reference as per schedule is answered in favour of the management of the 1<sup>st</sup> party LIC. The 2<sup>nd</sup> party (Union)/workman are not entitled to any relief and there is no need for issuing direction to the management of the 1<sup>st</sup> party.

Accordingly the reference is dismissed. No order of cost.

BINAY KUMAR SINHA, Presiding Officer

नई दिल्ली, 19 सितम्बर, 2014

**का.आ. 2620.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कांडला पोर्ट ट्रस्ट के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ सं. 7/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19.09.2014 को प्राप्त हुआ था।

[ सं. एल-37011/06/2010-आईआर (बी-II) ]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 19th September, 2014

**S.O. 2620.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 7/2011) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Ahmedabad as shown in the Annexure, in the Industrial Dispute between the management of Kandla

Port Trust and their workmen, received by the Central Government on 19.09.2014.

[No. L-37011/06/2010-IR (B-II)]

RAVI KUMAR, Section Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

#### Present :

Binay Kumar Sinha,  
Presiding Officer, CGIT-cum-Labour Court,  
Ahmedabad, Dated 6<sup>th</sup> August, 2014

#### Reference: (CGITA) No-7/2011

The Chairman,  
Kandla Port Trust,  
Post Box No.-50,  
Gandhidham, Kutch (Gujarat) ...First Party

#### And

Their Workman  
Through The President,  
Kandla Port Karmachari Sangh,  
TCX-5-94,  
Gandhidham,  
Kutch-370201 ...Second Party

For the 1<sup>st</sup> party : Shri K.V.Gadhia, Advocate  
Shri M.K. Patel, Advocate

For the Second Party : None

#### AWARD

The Central Government/Ministry of Labour, New Delhi vide order No. L-37011/06/2010-(IR (B-II)) dated 04.01.2011 referred the dispute for adjudication in respect of the matters specified in the schedule:

#### SCHEDULE

“Whether Shri Kishan Kachu is entitled to employment in Kandla Port Trust after merger with Kandla Dock Labour Board in place of his deceased father, Kachu Jakhu Ex-R.P. Worker Wage No. 75/C working in Kandla Dock Labour Board. If so, to what relief Shri Kishan Kachu is entitled to?”

2. The notice were sent to the parties for appearance and for filing pleadings/Statement of claim and W/s. with documents. The 2<sup>nd</sup> party failed to appear and also failed to submit W/s inspite of number of adjournment given in this case whereas the 1<sup>st</sup> party through lawyer remain in appearance. It is upon the Union to prove its claim but has palpably failed. The 2<sup>nd</sup> party appear to have lost interest. In such view of the matter, the terms of reference as per schedule is answered in negative that the workman Shri Kishan Kachu is not entitled to employment in

Kandla Port Trust after merger with Kandla Dock Labour Board in place of his deceased father, Kachu Jakhu, Ex-R.P. worker Wage No. 75/C working in Kandla Labour Board. The concern workman is not entitled to any relief.

Accordingly the reference is dismissed. No order of cost.

BINAY KUMAR SINHA, Presiding Officer

नई दिल्ली, 19 सितम्बर, 2014

**का.आ. 2621.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार जे.एम. बेक्सी एण्ड कंपनी, सेवा सदन-II के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ सं. 129/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19.09.2014 को प्राप्त हुआ था।

[सं. एल-37011/9/2013-आईआर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 19th September, 2014

**S.O. 2621.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 129/2013) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Ahmedabad as shown in the Annexure, in the Industrial Dispute between the management of J.M. Baxi and Company, Seva Sadan-II and their workmen, received by the Central Government on 19.09.2014.

[No. L-37011/9/2013-IR (B-II)]

RAVI KUMAR, Section Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

#### Present :

Binay Kumar Sinha,  
Presiding Officer, CGIT-cum-Labour Court,  
Ahmedabad, Dated 23rd June, 2014

#### Reference: (CGITA) No.-129/2013

Adjudication Order No. L-37011/9/2013/IR-(B-II)

The senior General Manager,  
J.M. Baxi & Company, Sevasadan-II,  
New Kandla-370210  
GUJARAT ...First Party

#### And

Their Workman  
Through the General Secretary,  
Kandla Port workers Union,

A-15, 1<sup>st</sup> floor, Ganesh Building,  
Near Police Station,  
Gandhidham (Kutch) 370201 ...Second Party

For the First Party : Shri Bhushan K.  
Vachharajani, Advocate

For the Second Party :- Shri G.K. Parmar, President,  
All India Gujarat Kamdar  
Karmachari Union

#### AWARD

The Government of India/Ministry of labour, New Delhi vide its order no. L- 37011/9/2013-(IR (B-II)) dated 10.07.2013, referred the dispute existing between the employers in relation to the management of J.M. Baxi & Company, Seva Sadan-II and their workman for adjudication to this Tribunal (C.G.I.T.-cum-Labour Court, Ahmedabad) in respect of the matters specified in the Schedule:

#### SCHEDULE

“Whether the action of M/s. J.M. Baxi & Company, Kandla in retrenching these 07 workers along with Shri Karshan Vaghela, watchman w.e.f. 15.06.2012 violating the provisions of I.D. Act, 1947 is justified? What relief these workmen are entitled to?”

2. The notice to the parties were issued to submit statement of claim/written statement and the supporting documents etc. by appearing in the case. The 1<sup>st</sup> party appeared on 17.01.2014 and executed Vakildpatra in favour of Shri Bhushan K. Vachhrajani, Advocate vide Ext.3. This case is running for submitting statement of claim by the 2<sup>nd</sup> party by the date 12.08.2014.

3. In the mean time both parties appeared on 23.06.2014 with a memorandum of settlement (Ext.7) and the 2<sup>nd</sup> party filed withdrawal application (Ext.5) with authority letter of workman Karshan Vaghela in favour of Shri G.K. Parmar, President, All Gujarat Kamdar Karmachari Union (Ext.4). Also a joint application on 23.06.2014 (Ext.6) was filed by the parties to take the matter on board since the parties have arrived at settlement outside court and they intend for disposal of this reference.

4. Heard Shri Yogesh Shah, Sr. G.M. of M/s. J.M. Baxi & Company and its lawyer Shri Bhushan B. Vachhrajani, Advocate for the 1<sup>st</sup> party and Shri Karsan Vaghela, concerned workman and Shri G.K. Parmar for the 2<sup>nd</sup> party. Perused the memorandum of settlement (Ext.7), withdrawal application (Ext.5) and the application praying (Ext.6) for taking the matter on board which is fixed on 12.08.2014. As per prayer, the application (Ext.6) is allowed and the matter is taken on board.

5. As per memorandum of settlement duly signed by the parties, Advocate and Union representative has been pressed that the parties have amicably settled their dispute outside the court and the concerned workman Shri Karsan has been paid total of Rs. 2,09,800/- towards full and final settlement by the 1<sup>st</sup> party employee which was accepted by the workman Shri Karshan Vaghela. As per withdrawal application (Ext.5) out of 7 workman involved six workman (employees) had settled the dispute with the company and obtained their dues before the reference was made and actually remaining one workman (employee) Shri Karsan Vaghela had not earlier settled the dispute before the reference was made. But now this workman (2<sup>nd</sup> party) has also settled the dispute with the 1<sup>st</sup> party company outside the court resulting in filing of memorandum of settlement (Ext.7) and withdrawal application (Ext.5) by the 2<sup>nd</sup> party.

6. Thus there remains no dispute between the parties in this reference and so no need to adjudicate upon, the terms of reference specified in the schedule.

So the withdrawal application of the 2<sup>nd</sup> party (Ext.5) is accepted in view of memorandum of settlement (Ext.7). Accordingly, the reference is dismissed as withdrawn. No order of any cost.

This is my award.

BINAY KUMAR SINHA, Presiding Officer

नई दिल्ली, 19 सितम्बर, 2014

**का.आ. 2622.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक ऑफ बड़ौदा के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ सं. 464/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19.09.2014 को प्राप्त हुआ था।

[ सं. एल-12012/188/2001-आईआर (बी-II) ]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 19th September, 2014

**S.O. 2622.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 464/2004) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Ahmedabad as shown in the Annexure, in the Industrial Dispute between the management of Bank of Baroda and their workmen, received by the Central Government on 19.09.2014.

[No. L-12012/188/2001-IR (B-II)]

RAVI KUMAR, Section Officer

## ANNEXURE

### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

#### Present :

Binay Kumar Sinha, Presiding Officer  
CGIT-cum-Labour Court,  
Ahmedabad, Dated 6th June, 2014

#### Reference: (CGITA) No.-464/2004

Reference: (I.T.C) No.-14/2002(old)

Adjudication order No. 12012/188/2001-IR(B-II))

The Zonal Manager,  
Bank of Baroda,  
North Gujarat Zone,  
Opp. Income Tax office,  
Ahmedabad (Gujarat) 380014 ...First Party

#### And

Their Workman  
Shri Osman Aba Padya  
C/o Mehmoodbhai Painter,  
Near Rathkhana Masjid,  
Sukhnath Chowk,  
Junagadh (Gujarat) ...Second Party

For the First Party : Shri Vikram K. Mashar,  
Advocate

For the Second Party : Shri P.S. Mehta, Advocate

#### AWARD

The Government of India/Ministry of labour, New Delhi vide its order No. L-12012/188/2001-IR (B-II) dated 15.02.2002 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matters specified in the schedule:

#### SCHEDULE

“Whether the action of the management of Bank of Baroda, Ahmedabad in removing Shri Osman Aba Padya from the service w.e.f. 22.12.2000 is legal and justified? If not, what relief the workman concerned is entitled for?”

2. The facts of the case of the workman as per statement of claim (Ext.3) in narrow compass is that the workman Osman Aba Padya was serving as peon (sub staff) at college Road branch, Junagadh during the period from 17.09.1984 to 16.06.1990. His misconduct came to picture that one Mr. Dhirajlal Madanlal Khachhadia closed his current Account at College Road branch of Bank of Baroda, Junagadh on 10.12.1998 and surrendered unsigned cheques bearing No. 78720 to 78750. On closure of said current Account the unused cheques was handed over to the workman Osman (sub

staff) for destruction but he stole one cheque leaf No. 78725 and entered into conspiracy with Mr. Mohamed Safi Abdul Gani who was maintaining his S/B Account No. 2486 with Union Bank of India, Junagadh and the said stolen cheque No. 78725 fraudulently drawn for Rs. One lakh was deposited in the said Union Bank of India, Junagadh for the credit of S/B A/C No. 2486 of Mr. Abdul Gani and on 17.04.1990 said amount of Rs. One lakh was withdrawn by Abdul Gani by entering into criminal conspiracy with Osman Aba Padya for cheating and defrauding the Bank of Baroda. The duty of the workman Osman (sub staff) was to go to main branch Junagadh of Bank of Baroda to deliver outward clearing cheques in the morning and to come back and again to go to the main branch to receive inward clearing cheques. When inward clearing cheques were sorted out by Mr. Vinaybhai, concerned clerk then Osman Aba Padya called Vinaybhai to attend a person in the Bank premises and said Vinaybhai went away to attend the person in the meantime the workman Osman Aba Padya managed to steal away the said forged cheque of Rs. One Lakh from the bunch of cheques pertaining to College Road branch of Bank of India, Junagadh and destroyed the same. Such fraudulent transaction was detected. Police case was instituted, workman Osman Aba Padya was arrested with other accused involved in fraudulent transaction. The workman Osman Aba Padya was suspended. Departmental proceeding was initiated by issuing charge sheet. Domestic enquiry conducted, management produced witnesses as well as documentary evidence to substantiate charges before enquiry officer. The stand of the workman is that he was falsely implicated in the case and he is innocent and he has nothing to do with unutilised cheque book leaf No. 78725 of current Account holder Mr. Dhirajlal, he has nothing to hatch up conspiracy with Mr. Mohamed Safi Abdul Gani. Further stand taken is the 1st party Bank in order to save skin of real faulty staff, falsely fastened liability upon him. Further stand is that he was acquitted in criminal trial and so there is no ground in holding him guilty of gross negligence under the charge sheet in the domestic inquiry, principles of natural justice not followed, the punishment of removal imposed upon him is shockingly disproportionate to the gravity of misconduct.

3. On the other hand, the case of the 1<sup>st</sup> party (B.O.B.) inter alia as per written statement (Ext.7) is that the principles of natural justice was followed in holding domestic inquiry, delinquent workman was given equal opportunity to defend himself. The contention of the Bank (1st party) is that the workman was sub staff at College Road branch, appointed in the year 1980 and was placed under suspension vide letter dated 11.06.1990, pending departmental enquiry for his alleged

fraudulent acts of misconduct during his tenure at College Road branch, Junagadh. On workman's request that the criminal case is pending against him. So, departmental inquiry for the charge of fraud was kept in abeyance and not conducted immediately. Thereafter independent departmental inquiry was conducted by appointing inquiry officer for the charges levelled against him. His guilt's of gross misconduct was proved in the departmental inquiry proper and reasonable punishment order of removal from the services of Bank with superannuation benefits was passed by the Disciplinary Authority dated 20.12.2000 and the appeal before the appellate authority was also rejected after due consideration of the proved misconduct of the delinquent workman. On these ground, the prayer is made to reject the reference on merit since the delinquent workman is not entitled to any relief.

4. At the very outset it has to be mentioned that the propriety of domestic inquiry held against the delinquent workman was decided as preliminary issue vide order dated 10.10.2011 (Ext.29) and it has been held that the principles of natural justice was followed, the workman was given opportunity to defend himself against the memo of charges levelled against him, the findings of inquiry officer are not perverted and the domestic inquiry held against the delinquent workman is fair valid and proper, so the matter in the case was fixed for evidence if any on gainful employment and argument on quantum of punishment awarded to the delinquent by the Disciplinary Authority.

5. The 2<sup>nd</sup> party (delinquent workman) Shri Osman Aba Padya adduced documentary evidence by submitting 20 documents with list Ext.32 marked exhibits 35 to 54. He also submitted his affidavit in chief (Ext.33) which is on point of non-employment since after removal from the services of the Bank. He was also cross examined by Shri V.K. Mashar, Advocate for the 1st party Bank. The 1<sup>st</sup> party (Bank) also examined a witness (ext.58) Shri Basudeo D. Parmar, Chief manager, H.R.M. Bank of Baroda, Jamnagar on point of justification of the order of punishment to the delinquent since due to misconduct of fraud by the workman the image of the Bank was maligned and denying the suggestion given to him in cross-examination by the workman's Advocate Shri P.S. Mehta, it is not true that punishment imposed upon the workman is too harsh.

6. The following issues are taken up for determination in this case.

### ISSUES

- (i) Is the reference maintainable?
- (ii) Has the 2<sup>nd</sup> party workman Shri Osman Aba Padya any valid cause of action?



- (iii) Whether the punishment order dated 22.12.2000 awarded to the delinquent by the Disciplinary Authority is proportionate to the gravity of misconduct?
- (iv) Whether the action of the management of Bank of Baroda (1<sup>st</sup> party) in removing the 2<sup>nd</sup> party from the service w.e.f. 22.12.2000 is legal and justified?
- (v) Whether the 2<sup>nd</sup> party is entitled to any relief ?

### FINDINGS

7. **ISSUE NO. (iii) & (iv):** Ext.22 is memo of charge dated 27.02.1999 against the delinquent workman O.A. Padya. Ext.23 is second show cause cum proposed punishment memo given to the delinquent dated 12.10.2000. Ext.24 is order of punishment of removal from the service with superannuation benefit with immediate effect dated 22.12.2000. The following charge had been levelled against the workman (2<sup>nd</sup> party):-

- (i) Doing acts prejudicial to the interest of bank
- (ii) Gross negligence in performing duties
- (iii) has not taken possible steps to ensure and protect the interest of Bank but has committed such act(s) of omission and commission as were contrary and detrimental
- (iv) Caused or committed act(s) likely to cause financial loss to the tune of Rs. One lakh to the Bank.

8. I have gone through the evidence oral and documentary produced against the workman Osman during course of domestic enquiry. There is abundance evidence that the customer of college road branch of Bank of Baroda Mr. Dhirajlal M. Kacchdia had closed his current A/c on 10.12.1988 and surrender his unused cheques bearing No. 78720 to 78750. After closure of current A/c of that customer, the workman was handed over the unused cheque book contain those cheque's No's for destruction but the delinquent fraudulently pick out a cheque leaf No.. 78725 and by use of that cheque Mr. Gani credited Rs. One lakh in his S/B/ A/c at Union Bank of India. The very act of the delinquent in fraudulently removing one unused blank cheque speaks a volume about dishonest intention on part of him. How that blank cheque was passed on by him to Mr. Gani his paramour has also come in evidence of enquiry witness. Admitted position is also that the said stolen cheque leaf was handed over by the workman to Mr. Gani for ulterior motive to defraud the college Road branch of Bank of Baroda with the help of workman O.A. Padya. Admittedly due to gross negligence of the workman the bank was put to loss of Rs. One Lakh. Bank service to customer is to maintain confidence among its customer but such act of omission and commission on part of

the workman in stealing away one unused cheque handing over to Mr. Gani for its fraudulent use and during course of duty of handing over and bringing back outwards and inwards clearance paper including questioned cheque. Participated in destruction of cheque from detection of fraud further speaks a volume about lack of integrity, loyalty to bank service as sub staff by the concerned workman.

9. It has been submitted in the written argument on behalf of the 2<sup>nd</sup> party (Ext.16) that the workman and co-accused Mr. Gani were acquitted in the criminal trial for the offence u/s. 120B, 381,409,467,474 and 477 of the I.P.C. by the trial Magistrate (C.J.M) in criminal trial No. 8891/90 by Judgment dated 30.05.2002 vide Ext.59 and the state went in appeal against acquittal before the Hon'ble Gujarat High Court but the appeal was rejected by the Hon'ble High Court vide judgment dated 29.06.2010 passed in criminal Appeal No. 915 of 2002 vide Ext.60 and so in view of the matter action on part of the management of Bank in passing punishment of removal from services of the workman by order dated 22.12.2000 is illegal and is fit to be set aside by this tribunal by invoking the power u/s. 11 A of the I.D. Act, 1947 and the workman deserves reinstatement with back wages etc.

10. On the other hand, it has been vehemently argued that proof of charges of misconduct in departmental inquiry is based upon preponderance of evidence and no need as to prove of charges beyond reasonable shadow of doubts as required in criminal trial. It has been further pointed out that the workman was not honourably and cleanly acquitted of the criminal charges rather was given benefit of doubts and was acquitted. It has been further submitted that there is no bar in conducting and concluding departmental inquiry during pendency of protracted criminal trial. Such argument adduced on behalf of the 2<sup>nd</sup> party that there is inordinate delay in serving /issuing charge sheet upon the delinquent workman has no leg to stand because police case had been instituted and that was pending for long period and the delinquent had been put under suspension and so in that view of the matter issuing of charge sheet in the year 1999 (27.02.1999) and passing of punishment order dated 22.12.2000 during pendency of criminal trial is not at all illegal and unwarranted. Because there is catena of decision that criminal trial and domestic inquiry can proceed independently.

11. The case law of Anil Dogre vs. Secretary (Labour) and another (2012-IV-LLJ-7 Delhi H.C.) is not applicable in the instant case. Another case law is Laxmi Barat Bavisi (widow) and another vs. Permanent Magnets Ltd. And others (2012-IV-LLJ 129 Bombay HC) is not also fit in the facts and circumstance of the case and the gravity

of misconduct of the 2<sup>nd</sup> party workman. The oral evidence of workman that he remained unemployed after removal from service and had applied at several places for job are not tenable in the proved misconduct of the delinquent workman. More so, passing punishment by removal from service has not caused economic death of the workman because his removal was with superannuation benefits. More so, his two sons are earning and maintaining the family and so there is no question of economic death or even financial hardship to him in view of superannuation benefits. The case law of Divisional controller, GSRT, Rajkot vs. Maganbhai G. Patel (199 Law suit (Guj) 525 is also not helpful to delinquent in the instant case.

12. On the other hand the learned counsel for the 1<sup>st</sup> party has also cited case law reported in 2003 law Suit (s) 167 on point of quantum of punishment that punishment awarded by the disciplinary Authority should not be interfered. Other case laws cited 212 Law Suit (Kerala) 1598, 2009 Law suit (S.C) 107 on quantum of punishment usually should not be interfered u/s 11-A of the I.D. Act. The case law of management K. Tea Estate Vs. ABC Mazdoor Sangh (2004 Law Suit (S.C) 1003. On the point that the approach and objective in the criminal proceeding and disciplinary proceeding is altogether distinct and different. The case law of Eastern Electric and Trading Com. Vs.. Baldevlal (1975 Law Suit (SC) 265 is on the point-Employer whose business with the customer is lost because of behaviour of one of his employee can have no use for the services of that employee.

13. After careful consideration of the punishment order of removal with superannuation benefit imposed by the management of the 1<sup>st</sup> party against the workman (2<sup>nd</sup> party). I find that such punishment imposed upon the 2<sup>nd</sup> party workman is not at all disproportionate to the gravity of proved misconduct of gross negligence. I do not find any ground to make interference in the quantum of punishment u/s. 11-A of the I.D.Act. So the 1st party has justified its action in removing from service of Shri Osman A. Padya with superannuation benefits. Thus issue No. III is answered in negative and Issue No.iv is answered in affirmative and both decided in favour of the 1<sup>st</sup> party (Bank).

14. **ISSUE No. (i) & (ii) :** In view of the findings to issue No. (iii) & (IV) in the foregoing. I further find and hold that the reference is not maintainable and the 2<sup>nd</sup> party Shri Osman A. Padya has no cause of action in this case.

15. **ISSUE No.(v) :** In view of the findings in the foregoing, I am of the considered view and therefore find and hold that the 2<sup>nd</sup> party Shri Osman A. Padya is not entitled to any relief since the reference is devoid of merit.

Accordingly the reference is dismissed. No order of any cost.

This is my Award.

BINAY KUMAR SINHA, Presiding Officer

नई दिल्ली, 19 सितम्बर, 2014

**का.आ. 2623.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक ऑफ महाराष्ट्र के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ सं. 87/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19.09.2014 को प्राप्त हुआ था।

[सं. एल-12011/26/95-आईआर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 19th September, 2014

**S.O. 2623.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 87/2002) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the Industrial Dispute between the management of Bank of Maharashtra and their workmen, received by the Central Government on 19.09.2014.

[No. L-12011/26/95-IR (B-II)]

RAVI KUMAR, Section Officer

#### ANNEXURE

#### BEFORE SHRI J.P.CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/87/2002 Date: 18.08.2014

**Party No. 1 :** Assistant General Manager,  
Bank of Maharashtra,  
Maha Building,  
Munje Chowk, Sitabuldi,  
Nagpur.

#### Versus

**Party No. 2 :** The vice President,  
Union of the Maharashtra  
Bank Employees,  
542, Congress Nagar,  
Nagpur.

#### AWARD

(Dated: 18th August, 2014)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government had referred the industrial

dispute between the employers, in relation to the management of Bank of Maharashtra and the Union of the Maharashtra Bank Employees, for adjudication, to the Central Government Industrial Tribunal-cum- Labour court, Jabalpur, as per letter **No.L-12011/26/95-IR (B-II) dated 30.12.1996**, with the following schedule:-

“Whether the action of the management of Bank of Maharashtra, Nagpur in reducing the H.R.A. and stopping of C.C.A. w.e.f. September, 1994 and further intending to give it retrospective effect from 01.03.1991 for the employees working in the Kamptee Branch of the Bank is proper, legal and justified? If not, to what relief the concerned workmen are entitled?”

**Subsequently, the reference was transferred to this Tribunal for disposal in accordance with Law.**

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the Union, “Union of the Maharashtra Bank Employees” (“The union” in short ) filed the statement of claim and the management of Bank of Maharashtra, (“Party No. 1” in short) filed their written statement.

The case as presented in the statement of claim by the union is that the service conditions of the employees of Nationalized bank are governed by the provisions of Sastry Award, Desai Award and different settlements signed between the representatives of the Banks through Indian Bank Association and trade unions of the employees and also settlements signed under the provisions of the Act and the party no.1 is a nationalized bank and the Awards and Settlements mentioned above are binding on the party no.1 and party no.1 had entered into settlements with the union/ unions on different subjects, which also govern inter-alia the service conditions of the employees working with party no.1 and party no.1 is categorized as ‘A’ class bank and in order to alleviate the financial sufferings of the employees, posted in and around large cities, Bipartite Settlements were signed by the party no.1 and the unions for payment of City Compensatory Allowance (“CCA” in short) and House Rent Allowance (“HRA” in short) and the said allowances are paid to the employees to partially neutralize the divesting impact of the cost of living associated with certain places and party no.1 vide circular dated 14.10.1983 started paying CCA & HRA to the employees working at its Kamptee branch with retrospective effect from 01.03.1981 and the employees posted in the said branch became entitled for such allowances on the basis of the 1981 census and on the factual premise that the said branch being totally dependent on Nagpur, ought to be treated at par with Nagpur for the purpose of payment of CCA and HRA etc. and almost majority of the staff of Kamptee branch

is living and residing in Nagpur, since residential arrangements have not been made for them at Kamptee by party no.1.

The further case of the union is that the Branch Manager, Kamptee branch in the salary paid and credited in the salary accounts of the employees on 24.10.1994 for the month of October, 1994 did not calculate and pay CCA at all and paid HRA in reduced rate and on 25.10.1994, the employees made a joint representation to party No.1 stating inter-alia that they are entitled for the aforesaid allowances and the action of the management in not paying the same is illegal and on receipt of the said representation by it (union), it gave a demand notice to party no.1, pointing out the patent illegality committed by the management and requested for restoration of the allowance deducted from the salary of the staff members and the Branch Manager, Kamptee Branch informed them that the action was taken by him at the instance of party no.1 and party no.1 also intended to recover the amount of CCA and related HRA already paid to the employees working at Kamptee Branch w.e.f. 01.03.1991 and as such, they filed industrial dispute before the Assistant Labour Commissioner (Central), Nagpur under the provisions of the Act and in view of the same, party no.1 decided not to give retrospective effect to the order of recovery of the amount of CCA and related HRA from 01.03.1991 and it is clear that after adjudication of the dispute, the party no.1 intend to make recoveries of the said amount from the salary of the staff w.e.f. 01.03.1991.

It is also pleaded by the union that Kamptee Branch has been treated by party no.1 as one of the branches of Nagpur city for all the purposes and the said branch is also a member of clearing house run by Reserve Bank of India, Nagpur and party no.1 had entered into a settlement dated 13.04.1987 on the subject of allotment of special allowance posts, wherein, the criteria of city seniority had been introduced for the first time and in the said settlement, in the definition of “City”, Kamptee branch was included and while allotting posts attracting special allowance, seniority of employees working at Kamptee branch was considered and not only that but also, employees holding special allowance post in the branches of Nagpur city were transferred to Kamptee branch and vice versa and party no.1 had transferred many employees, who had applied for their transfer to Nagpur city as per the settlement entered by it under the policy of “request transfer of employees” to Kamptee branch and such facts go to demonstrate that Kamptee Branch for all the time has been treated as one of the Branches of Nagpur city and the officers working at Kamptee branch are also categories as officers of Nagpur City branch and their working at Kamptee branch is not counted as Rural Branch for the purpose of promotion/ elevation etc, as per the policy of party no.1 and the said fact establishes

that party no.1 is still treating Kamptee branch as one of the Branches of Nagpur city and in such identical situation, other banks, such as, State Bank of India, Bank of India etc. and Central Government employees especially all the departments related with the Ministry of Finance and Defence working at Kamptee are getting CCA and HRA on par with the employees working in Nagpur city.

It is further pleaded by the union that in identical situation and identical set of facts, the party no.1 had stopped payment of CCA and HRA to employees working at its Hingna Industrial Estate Branch, Nagpur from 1981 and recovered the amount of the same from the said employees after service of notice u/s. 9-A of the Act to the employees and the unions, as per the Rules and the matter came to be challenged by raising industrial dispute by them (union) and the dispute was referred to the Central Government Industrial Tribunal, Bombay for adjudication and the Presiding Officer of the said Tribunal set aside the notice of change and the action impugned vide the award dated 20.08.1993 and the facts of the present dispute are identical with the issues of the aforesaid case and the ratio of the said award is squarely applicable to the present case and the matter involved in the instant dispute is covered by items 3 and 8 of Fourth Schedule of the Act, which deal with requirement of notice as stipulated under section 9-A of the Act and as party no.1 stopped the payment of CCA and HRA to the employees of Kamptee branch, which they were getting since last more than 10 years, from October, 1994, such action amounted to illegal change of service conditions of the said employees and party no.1 failed to give any notice u/s. 9-A of the Act, as required by law, before stopping of payment of CCA and HRA to the employees of Kamptee branch and the action of party no.1 is neither justified nor legal.

The union has prayed to direct the party no.1 not to make recovery w.e.f. 01.03.1991 and to pay CCA and HRA to concerned employees w.e.f. September, 1994 with interest, after holding the action of party no.1 in reducing the HRA and stopping of payment of CCA as improper, illegal and unjustified.

3. The party no.1 in the written statement has pleaded inter-alia that payment of CCA and HRA was stopped by it, to the employees working at Kamptee Branch, as Kamptee was classified as “C” class town, after being segregated from Nagpur city urban agglomeration, as per Government of India Circular OM No. 2(2) 93-E.II (B) dated 14.05.1993 and vide memorandum No. 23 E-13 (24)-19 Estt. Dated 14.10.1993 and accordingly, CCA and HRA were required to be paid to the employees of Kamptee branch, at the rates applicable to ‘C’ class city and though the employees not working within the city were entitled for CCA/HRA, the payment of the same was subject to agreement between the parties and the law

in that regard and the entitlement of CCA/HRA was not absolute, but was subject to the changed circumstances and the employees working in Kamptee branch were getting the HRA and CCA by virtue of Sastri and Desai Awards and modified version of Bipartite settlements, entered into by it with the unions and modified from time to time and as per para 8.4 of the settlement dated 19.10.1966, it was agreed that, “For the purpose of house rent allowance, the latest available official figures of All India census shall be taken into account” and as per para III (1) A (iii) of Bipartite settlement dated 17.09.184, it was agreed that, “For the purpose of CCA, the latest available official figures of All India Census shall be taken into account.” and the employees working at the branches are entitled to receive CCA & HRA as per the population, to be declared by the census authority and the township of Kamptee was included in Nagpur urban Agglomeration as per 1981 census and therefore, the employees working at Kamptee branch became entitled to receive HRA and CCA on par with Nagpur Agglomeration area and the employees of Kamptee branch were accordingly paid the appropriate CCA and HRA as per the above mentioned Bipartite Settlements and the Branch Manager issued the communication as per the changed situation and the representation made by the employees of Kamptee branch was of no consequence and therefore, it did not act upon the same and similar was the case regarding the demand notice and in view of the change in the census of 1991 and in view of the agreement between the parties and the law in this regard, the employees were not entitled for CCA and HRA w.e.f. 01.03.1991 and as there was no change of any service condition and as Kamptee was segregated from Nagpur agglomeration area and categorized as ‘C’ class city by the census authorities, the provisions of the Bipartite settlement regarding payment of HRA and CCA automatically became operative, for which, no separate notice was required to be issued to the unions and the payment of CCA/HRA is strictly regulated, guided and decided as per the classification made by the latest available census figures and payment of CCA & HRA by certain other banks or institutions on par with Nagpur city to their employees working in Kamptee cannot be made a basis for demanding payment of CCA and HRA by its employees working at Kamptee Branch, as it would amount to breach of service condition and the transfer policy has no relevance with the payment of CCA/HRA and it withdrew the CCA/HRA as applicable to ‘B’ class city to employees working in Kamptee branch as per the directive of the Central Government dated 14.05.1993 and in the subsequent circular dated 21.03.1994, there is no direction by the Government to the bank to pay CCA/HRA on par with Nagpur city and the dispute relating to Hingna Industrial Branch has no relevance the same was based on entirely different facts and notice of change is required to be given as per section 9-A of the Act only for



change in service condition made otherwise than as provided in the Bipartite settlement and as the non-payment of CCA/HRA to the employees of its Kamptee Branch on par with Nagpur city was as a consequence of categorization of Kamptee as 'C' class town, as per the provisions of Bipartite settlement, no notice of change was required to be given and as such, the reference is liable to be answered against the union and the union is not entitled to any of the claims as prayed for.

4. In order to prove their respective claims, both the parties have adduced oral evidence, besides placing reliance on documentary evidence. One Sudhir Anant Gupte has been examined as a witness on behalf of the union, whereas, one Umesh B. Shinde has been examined as a witness on behalf of party no.1.

5. In the evidence on affidavit, the witness for the union has reiterated the facts mentioned in the statement of claim. However, in his cross examination, this witness has stated that the rate of payment of CCA and HRA to its employees working in different branches is not the same and the same is different according to the situation of the branches and the rate of payment of CCA and HRA depends upon the classification of the towns as classified by the census authority of Government of India, basing on the population and he cannot say if Nagpur has been declared as a B-1 city and Kamptee has been declared as a 'C' type town by census authority and the service conditions of the employees of the Bank of Maharashtra are governed by the Bipartite settlements and in the Bipartite settlement of 1966, it was agreed that payment of CCA and HRA would be made to the employees of the Bank according to the latest available figures of All India census and he cannot say if the Bank withdraw the payment of CCA and HRA to the employees of Kamptee branch at the same rate payable to the employees working in Nagpur city in view of the direction of the Government of India dated 14.05.1993.

6. The witness examined on behalf of the party no.1 in his evidence on affidavit has reiterated the facts mentioned in the written statement by party no.1. This witness in his cross-examination has stated that payment of CCA and HRA to the employees of Kamptee branch started again in August, 2000.

7. At the time of argument, it was submitted by the learned advocate for the union that the employees of party no.1 working in Kamptee branch were getting CCA and house rent at par with the employees of the Bank working in the branches of Nagpur city since 1981 and all of a sudden and without any notice, party no.1 stopped the payment of CCA totally and reduced the rate of payment of HRA by 4% to the employees of Kamptee branch from the month of September, 1994 and the change so made by party no.1 was quite illegal and notice under section 9-A of the Act was necessary to be given by the party no.1 as there was change of service condition as

mentioned in clauses 3 and 8 of the 4<sup>th</sup> Schedule and as such, the employees working at Kamptee branch are entitled for payment of CCA and HRA as before and the reference is liable to be answered in favour of the union.

8. Per contra, it was submitted by the learned advocate for the party no.1 that Kamptee was declared as 'C' class town after being segregated from Nagpur city Urban Agglomeration as per the circular of the Government of India dated 14.05.1993 and vide memorandum dated 14.10.1993, it was directed by the Government of India for payment of CCA and HRA to the employees working at Kamptee at the rate applicable to 'C' class city and the employees of the bank working in Kamptee branch were getting CCA and HRA in accordance with the provisions of Sastry and Desai Awards and the Bi-partite settlements arrived at between the parties from time to time and as per clause 8.4 of the Bi-partite settlement dated 19.10.1966, it was agreed between the parties that for the purpose of payment of HRA, the latest available official figures of All India Census shall be taken into account and as per para III (I) (A) (iii) of the Bi-partite settlement dated 17.09.1984, it was agreed that for the purpose of payment of CCA, the latest official figures of the All India Census shall be taken into account and on the basis of such settlements, the Bank stopped the payment of CCA and reduced the amount of HRA by 4%, after declaration of Kamptee as a "C" class town and there was no change of any service condition and the change of payment of CCA and HRA was made in pursuance to the above said settlements, there was no need to give any notice under section 9-A of the Act by party No.1 and payment of CCA and HRA by other Banks or Central Government Offices in higher rate to their employees working at Kamptee cannot be taken as a ground by the employees of the party No.1 working at Kamptee branch for payment of CCA or HRA at the same rate and the circular dated 13.04.1987, regarding transfer of the employees of the bank to Kamptee branch, holding the same to be included in Nagpur city cannot override the notification of the Government of India dated 14.05.1993, declaring Kamptee as a "C" class city and there is nothing wrong in the action of Bank and the Union or the concerned workmen are not entitled to any relief.

9. On perusal of the record and taking into consideration the submissions made by the learned advocates for the parties, the following undisputed facts are found:-

- (a) Kamptee town was made a part of Nagpur City urban agglomeration as per 1981 census.
- (b) The party No.1 vide circular dated 14.10.1983 started paying CCA and HRA to the employees working at Kamptee branch at par with the employees working in the branches of Nagpur City.

- (c) As per para 8.4 of the Bi-partite settlement dated 19.10.1966, it was agreed between the parties that for the purpose of payment of HRA, the latest official figures of All India census shall be taken into account.
- (d) As per para III (I) (A) (iii) 8.4 of the Bi-partite settlement dated 17.09.1984, it was agreed between the parties that for the purpose of payment of CCA, the latest official figures of All India census shall be taken into account.
- (e) As per Government of India's circular dated 14.05.1993, Kamptee was segregated from Nagpur City urban agglomeration and was declared as a "C" class town.
- (f) CCA and HRA were being paid to the employees of the Bank as per the Bi-partite settlements.
- (g) In view of the declaration of Kamptee as a "C" class town, as per circular dated 14.05.1993 of the Government of India, party No.1 stopped paying CCA and paid HRA in reduced rate to the employees working at Kamptee branch w.e.f. September, 1994.
- (h) In spite of the circular dated 14.05.1993, some other Banks and Government Offices decided and paid CCA and HRA to their employees working at Kamptee in the same rate as paid to them prior to 14.05.1993.
- (i) Some of the employees working at Kamptee branch of the party No.1 and the union made representations and raised objection against the action of the party No.1 in not paying the CCA and reducing the rate of payment of HRA from September, 1994.

10. According to the Union, the party No.1 is still treating Kamptee branch at par with other branches of Nagpur City, for all other purposes except payment of CCA and HRA and the action of party No.1 in denying payment of CCA and making payment of HRA in reduced rate amounted to change of service conditions as given in item nos. 3 and 8 of 4<sup>th</sup> schedule of the Act and before making any change in the service conditions, the party No.1 was legally bound to give notice under section 9-A of the Act and as no such notice was given, the action was illegal and as such, the same is liable to be set aside and the Award passed by the Central Government Industrial Tribunal, Bombay dated 20.08.1993 is squarely applicable to this case as the facts and circumstances of both the cases are identical.

11. At this juncture, I think it proper to mention that this Tribunal is not bound to follow the award passed by any other Central Government Industrial Tribunal. Moreover, after perusal of the award in question, it is found that the facts and circumstances of the case referred

in the said award are quite different from the facts and circumstances of the present reference in hand. In the case referred in the award in question, Hingna Industrial Estate Branch was not declared as "C" class town by the Government of India as per 1991 census. In that case, party No.1 was paying CCA and HRA to the employees working in the said branch, on the basis of 1981 census on par with the employees working in the branches of Nagpur City and without any change of the circumstances, party No.1 after giving notice under section 9-A of the Act, withdrew the payment of CCA and HRA to them from September, 1989, which is not the case in the present reference. Hence, the award dated 20.08.1993 passed by the Central Government Industrial Tribunal, Bombay has no application to the present case in hand.

12. Admittedly, Section 9-A of the Act prescribes that no employer, who proposes to effect any change in the condition of service applicable to any workman in respect of any matter specified in the fourth schedule shall effect such change:-

- (a) Without giving to the workmen likely to be affected by such change a notice in the prescribed manner of the nature of the change proposed to be effected; or
- (b) Within twenty-one days of giving such notice.

It is also found that payment of compensatory and other allowances are included in item no. 3 of the fourth schedule. So, in the normal course of action, any change in payment of CCA and HRA to its employees by an employer requires a notice under section 9-A of the Act.

However, Section 9-A of the Act provides two exceptions to such normal rules of giving notice. Proviso (a) to section 9-A of the Act, which is required to be considered in this reference says that no notice under section 9-A is required to be given, where the change is effected in pursuance of any settlement or award.

In this reference, it is the admitted case of the parties that by settlements dated 19.10.1966 and dated 17.09.1984, it was agreed by the parties that for the purpose of payment of HRA and CCA respectively, latest available official figure of All India census shall be taken into account. As in this case, it is clear from the materials on record that Kamptee was declared as a "C" class town after segregating the same from Nagpur City Urban agglomeration as per 1991 census, the party No.1 stopped payment of CCA and reduced the rate of HRA to its employees working at Kamptee branch from September, 1994, in pursuance to the settlements dated 19.10.1966 and 17.09.1984, there was no need for party No.1 to give notice under section 9-A of the Act, before effecting such changes.

13. As it is the admitted case of the parties that payment of CCA and HRA to the employees is governed by the

Bi-partite settlements entered into between the Bank and the Unions, payment of CCA and HRA by some other Banks or Offices of the Government to their respective employees working at Kamptee or that party No.1 treats Kamptee branch as a part of Nagpur City for other purposes cannot be taken as valid grounds for claiming CCA and HRA on par with the employees working in different branches of Nagpur city by the union.

14. In this case, though it is alleged by the union that the party No.1 wanted to make recovery of CCA and HRA paid to the employees working at Kamptee branch w.e.f. 01.03.1991, by giving retrospective effect to such order and due to raising of the dispute, party No.1 had decided not to implement the said decision, no proof has been produced in support of such claim. Party No.1 in the written statement has neither affirmed nor denied the same. However, as the notification given by the Government cannot be given retrospective effect, unless and until specific direction is given in the said notification itself, it is held that the party No.1 is not entitled to make recovery of the CCA and HRA already paid to the employees working at Kamptee branch from 01.03.1991 to August, 1994. Hence, it is ordered:-

### ORDER

The action of the management of Bank of Maharashtra, Nagpur in reducing the H.R.A. and stopping of payment of C.C.A. w.e.f. September, 1994 to the employees working in the Kamptee Branch of the Bank is proper, legal and justified. The Management of the Bank of Maharashtra is not entitled to recover the CCA and HRA already paid to the said employees for the period from 01.03.1991 to August, 1994. The concerned workmen are not entitled to any other relief.

J. P. CHAND, Presiding Officer

नई दिल्ली, 19 सितम्बर, 2014

**का.आ. 2624.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक ऑफ महाराष्ट्र के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ सं. 108/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19.09.2014 को प्राप्त हुआ था।

[सं. एल-12011/36/95-आईआर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 19th September, 2014

**S.O. 2624.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 108/2002) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the

Industrial Dispute between the management of Bank of Maharashtra and their workmen, received by the Central Government on 19.09.2014.

[No. L-12011/36/95-IR (B-II)]

RAVI KUMAR, Section Officer

### ANNEXURE

### BEFORE SHRI J.P.CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/108/2002

Date: 18.08.2014

**Party No.1** : The Regional Manager,  
Bank of Maharashtra,  
Maha Bank Building,  
Sitabuldi,  
Nagpur-440012.

### Versus

**Party No.2** : The General Secretary,  
Bank of Maharashtra  
Employees Association,  
C/o Bank of Maharashtra,  
Maha Bank Building,  
Sitabuldi,  
Nagpur-440012.

### AWARD

(Dated: 18<sup>th</sup> August, 2014)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government had referred the industrial dispute between the employers, in relation to the management of Bank of Maharashtra and their workmen, for adjudication, to the Central Government Industrial Tribunal-cum- Labour court, Jabalpur, as per letter No.L-12011/36/95-IR (B-II) dated 04.03.1997, with the following schedule:-

"Whether the action of the management of Regional Office, Bank of Maharashtra, Nagpur in reducing the H.R.A. and stopping C.C.A. of the employees working in the Kamptee Branch of the Bank w.e.f. September, 1994 is valid, proper and justified? If not, to what relief the said workmen are entitled and from what date?"

Subsequently, the reference was transferred to this Tribunal, for disposal in accordance with Law.

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the Union, "Bank of Maharashtra Employees Association" ("The union" in short) filed the statement of claim and the management of Bank of Maharashtra, ("Party No. 1" in short) filed their written statement.

The case of the union as presented in the statement of claim is that the employees working at Kamptee branch of party No.1 were receiving House Rent Allowance and City Compensatory Allowance (“H.R.A.” and “C.C.A.” in short respectively) equivalent to those employees working in Nagpur till August, 1994 and the party No.1 all of a sudden unilaterally under the guise of some circular issued by the Government of India stopped the payment of the same and as the employees working at Kamptee branch were getting the H.R.A. and CCA by virtue of the Bi-partite settlements and as it was a contractual obligation, no single party was allowed to commit any breach of the same and as such, the decision of the party No.1 was contrary to Law and void ab-initio and the said decision was implemented without giving any prior notice to the employees, although it was incumbent on the part of the party No.1 to do so and as such, the decision of the party No.1 was illegal and contrary to the established procedure of Law.

It is further pleaded by the union that Bank of India, State Bank of India, E.S.I.C. Sub- Regional office and Government of Maharashtra continued to pay HRA and CCA to their employees working at Kamptee, equivalent to employees working at Nagpur and as such, party No.1 was not entitled to deduct HRA and stopped payment of CCA to its employees working in Kamptee branch and agreement dated 13.04.1987 was signed by the party No.1 and All India Bank of Maharashtra Employees Federation in regard to “Settlement on allowance carrying posts” i.e. city seniority and according to the said settlement, a seniority list was prepared, which included Kamptee Branch within the purview of Nagpur City and according to the said settlement, senior employees were transferred to Kamptee branch against allowance carrying posts, but due to the decision of the party No.1, those employees were debarred from being transferred to the allowance carrying posts in Nagpur and the action of party No.1 was illegal and bad in law and amounted to material change in service conditions, which should not have made, until notice under section 9-A of the Act was given and party No.1 is a Government of India undertaking and the party No.1 withdrew the allowances as per the directives of the Central Government dated 14.05.1993, but vide circular dated 21.03.1994, the Central Government conveyed in clear cut terms that though Kamptee has been delinked from Nagpur Urban Agglomeration, the employees working in various departments in Kamptee Area would continue to get CCA/ HRA at par with Nagpur Area with a view to avoid financial hardships and this arrangement would continue till further instructions and party No.1 flouted the legitimate instructions of the Government, which was highly illegal and contrary to the norm of justice and cannot be allowed to continue and in a similar case, the CGIT NO.1, Bombay had decided the dispute in favour

of the employees and the said award is binding on the party No.1 and the action of the party No.1 amounted to unfair labour practice and liable to be set aside.

The union has prayed to quash and set aside the instructions issued by the party No.1 regarding payment of CCA and HRA.

3. The party no.1 in the written statement has pleaded inter-alia that payment of CCA and HRA was stopped by it to the employees working at Kamptee Branch, as Kamptee was classified as “C” class town, after being segregated from Nagpur city urban agglomeration, as per Government of India Circular OM No. 2(2) 93-E.II (B) dated 14.05.1993 and vide memorandum No. 23 E-13 (24)-19 Estt. Dated 14.10.1993 and accordingly, CCA and HRA were required to be paid to the employees of Kamptee branch at the rates applicable to ‘C’ class town and though the employees not working within the city were entitled for CCA/HRA, the payment of the same was subject to agreement between the parties and the law in that regard and the entitlement of CCA/HRA was not absolute, but was subject to the changed circumstances and the employees working in Kamptee branch were getting the HRA and CCA by virtue of Sastri and Desai Awards and modified version of Bipartite settlements entered into by it with the unions and modified from time to time and as per para 8.4 of the settlement dated 19.10.1966 it was agreed that, “For the purpose of house rent allowance, the latest available official figures of All India census shall be taken into account” and as per para III (1) A (iii) of Bipartite settlement dated 17.09.84 it was agreed that, “For the purpose of CCA, the latest available official figures of All India Census shall be taken into account.” And the employees working at the branches are entitled to receive CCA & HRA as per the population to be declared by the census authority and the township of Kamptee was included in Nagpur urban Agglomeration as per 1981 census and therefore, the employees working at Kamptee branch became entitled to receive HRA and CCA on par with Nagpur Agglomeration area and the employees of Kamptee branch were accordingly paid the appropriate CCA and HRA as per the above mentioned Bipartite Settlements and the Branch Manager issued the communication as per the changed situation and the representation made by the employees of Kamptee branch was of no consequence and therefore, it did not act upon the same and similar was the case regarding the demand notice and in view of the change in the census of 1991 and in view of the agreement between the parties and the law in this regard, the employees were not entitled for CCA and HRA w.e.f. 01.03.1991 and as there was no change of any service condition and as Kamptee was segregated from Nagpur agglomeration area and categorized as ‘C’ class city by the census authorities, the provisions of the Bipartite settlement regarding payment of HRA and CCA automatically became



operative, for which, no separate notice was required to be issued to the unions and the payment of CCA/HRA is strictly regulated, guided and decided, as per the classification made by the latest available census figures and payment of CCA & HRA by certain other banks or institutions on par with Nagpur city to their employees working in Kamptee cannot be made a basis for demanding payment of CCA and HRA by its employees working at Kamptee Branch, as it would amount to breach of service condition and the transfer policy has no relevance with the payment of CCA/HRA and it withdrew the CCA/HRA as applicable to 'B' class city to employees working in Kamptee branch, as per the directive of the Central Government dated 14.05.1993 and in the subsequent circular dated 21.03.1994, there is no direction by the Government to the bank to pay CCA/HRA on par with Nagpur city and the dispute relating to Hingna Industrial Branch has no relevance as the same was based on entirely different facts and notice of change is required to be given as per section 9-A of the Act, only for change in service condition made otherwise than as provided in the Bipartite settlement and as the non-payment of CCA/HRA to the employees of its Kamptee Branch on par with Nagpur city was as a consequence of categorization of Kamptee as 'C' class town, as per the provisions of Bipartite settlement, no notice of change was required to be given and as such, the reference is liable to be answered against the union and the union is not entitled to any of the claims as prayed for.

4. In order to prove their respective claims, both the parties have adduced oral evidence, besides placing reliance on documentary evidence. One Shri Ashok Babulal Mohabey has been examined as a witness on behalf of the union, whereas, one Umesh B. Shinde has been examined as a witness on behalf of party no.1.

5. In his evidence on affidavit, the witness for the union has reiterated the facts mentioned in the statement of claim. However, in his cross-examination, this witness has stated that this dispute is regarding non-payment of CCA and HRA to the employees working in Kamptee branch and City compensatory allowance is paid according to the gradation of the city and its population and Kamptee is a Tahasil and the same is not a city and as per Government of India's circular No. 2(2)/93-E-II(B) dated 14.05.1993 and memorandum No.23 E-13(24)-19-Estt. Dated 14.10.1993, Kamptee was declared as a "C" class town and CCA, HRA, pay scale and special allowance etc are paid to the employees of the Bank as per the Bi-partite settlements and as per para 8.4 of the Bi-partite settlement dated 19.10.1966, for the purpose of payment of House Rent Allowance, the latest available official figures of All India Census shall be taken into account and as per para III (1) A (iii) of the Bi-partite settlement dated 17.09.1984, for the purpose of payment

of CCA, the latest available official figures of All India Census shall be taken into account.

6. The witness examined on behalf of the party no.1 in his evidence on affidavit has reiterated the facts mentioned in the written statement by party no.1. This witness in his cross-examination has stated that payment of CCA and HRA to the employees of Kamptee branch started again in August, 2000.

7. At the time of argument, it was submitted by the learned advocate for the union that the employees of party no.1 working in Kamptee branch were getting CCA and HRA at par with the employees of the Bank working in the branches of Nagpur city since 1981 and all of a sudden and without any notice, party no.1 stopped the payment of CCA totally and reduced the rate of payment of HRA by 4%, to the employees of Kamptee branch, from the month of September, 1994 and the change so made by party no.1 was quite illegal and notice under section 9-A of the Act was necessary to be given by the party no.1, as there was change of service condition, as mentioned in clauses 3 and 8 of the 4<sup>th</sup> Schedule and as such, the employees working at Kamptee branch are entitled for payment of CCA and HRA as before and the reference is liable to be answered in favour of the union.

8. Per contra, it was submitted by the learned advocate for the party no.1 that Kamptee was declared as 'C' class town after being segregated from Nagpur city Urban Agglomeration, as per the circular of the Government of India dated 14.05.1993 and vide memorandum dated 14.10.1993, it was directed by the Government of India for payment of CCA and HRA to the employees working at Kamptee at the rate applicable to 'C' class city and the employees of the bank working in Kamptee branch were getting CCA and HRA in accordance with the provisions of Sastry and Desai Awards and the Bi-partite settlements arrived at between the parties from time to time and as per clause 8.4 of the Bi-partite settlement dated 19.10.1966, it was agreed between the parties that for the purpose of payment of HRA, the latest available official figures of All India Census shall be taken into account and as per para III (I) (A) (iii) of the Bi-partite settlement dated 17.09.1984, it was agreed that for the purpose of payment of CCA, the latest official figures of the All India Census shall be taken into account and on the basis of such settlements, the Bank stopped the payment of CCA and reduced the amount of HRA by 4%, after declaration of Kamptee as a "C" class town and there was no change of any service condition and the change of payment of CCA and HRA was made in pursuance to the above said settlements, there was no need to give any notice under section 9-A of the Act by party No.1 and payment of CCA and HRA by other Banks or Central Government Offices in higher rate to their employees working at Kamptee cannot be taken as a

ground by the employees of the party No.1 working at Kamptee branch for payment of CCA or HRA at the same rate and the circular dated 13.04.1987, regarding transfer of the employees of the bank to Kamptee branch, holding the same to be included in Nagpur city cannot override the notification of the Government of India dated 14.05.1993, declaring Kamptee as a “C” class city and there is nothing wrong in the action of Bank and the Union or the concerned workmen are not entitled to any relief.

9. On perusal of the record and taking into consideration the submissions made by the learned advocates for the parties, the following undisputed facts are found:-

- (a) Kamptee town was made a part of Nagpur City urban agglomeration as per 1981 census.
- (b) The party No.1 vide circular dated 14.10.1983 started paying CCA and HRA to the employees working at Kamptee branch at par with the employees working in the branches of Nagpur City.
- (c) As per para 8.4 of the Bi-partite settlement dated 19.10.1966, it was agreed between the parties that for the purpose of payment of HRA, the latest official figures of All India census shall be taken into account.
- (d) As per para III (I0 (A) (iii) 8.4 of the Bi-partite settlement dated 17.09.1984, it was agreed between the parties that for the purpose of payment of CCA, the latest official figures of All India census shall be taken into account.
- (e) As per Government of India's circular dated 14.05.1993, Kamptee was segregated from Nagpur City urban agglomeration and was declared as a “C” class town.
- (f) CCA and HRA were being paid to the employees of the Bank as per the Bi-partite settlements.
- (g) In view of the declaration of Kamptee as a “C” class town, as per circular dated 14.05.1993 of the Government of India, party No.1 stopped paying CCA and paid HRA in reduced rate to the employees working at Kamptee branch w.e.f. September, 1994.
- (h) In spite of the circular dated 14.05.1993, some other Banks and Government Offices decided and paid CCA and HRA to their employees working at Kamptee in the same rate as paid to them prior to 14.05.1993.
- (i) Some of the employees working at Kamptee branch of the party No.1 and the union made representations and raised objection against the action of the party No.1 in not paying the CCA

and reducing the rate of payment of HRA from September, 1994.

10. According to the Union, the party No.1 is still treating Kamptee branch at par with other branches of Nagpur City, for all other purposes except payment of CCA and HRA and the action of party No.1 in denying payment of CCA and making payment of HRA in reduced rate amounted to change of service conditions as given in item nos. 3 and 8 of 4<sup>th</sup> schedule of the Act and before making any change in the service conditions, the party No.1 was legally bound to give notice under section 9-A of the Act and as no such notice was given, the action was illegal and as such, the same is liable to be set aside and the Award passed by the Central Government Industrial Tribunal, Bombay dated 20.08.1993 is squarely applicable to this case as the facts and circumstances of both the cases are identical.

11. At this juncture, I think it proper to mention that this Tribunal is not bound to follow the award passed by any other Central Government Industrial Tribunal. Moreover, after perusal of the award in question, it is found that the facts and circumstances of the case referred in the said award are quite different from the facts and circumstances of the present reference in hand. In the case referred in the award in question, Hingna Industrial Estate Branch was not declared as “C” class town by the Government of India as per 1991 census. In that case, party No.1 was paying CCA and HRA to the employees working in the said branch, on the basis of 1981 census on par with the employees working in the branches of Nagpur City and without any change of the circumstances, party No.1 after giving notice under section 9-A of the Act, withdrew the payment of CCA and HRA to them from September, 1989, which is not the case in the present reference. Hence, the award dated 20.08.1993 passed by the Central Government Industrial Tribunal, Bombay has no application to the present case in hand.

12. Admittedly, Section 9-A of the Act prescribes that no employer, who proposes to effect any change in the condition of service applicable to any workman in respect of any matter specified in the fourth schedule shall effect such change:-

- (a) Without giving to the workmen likely to be affected by such change a notice in the prescribed manner of the nature of the change proposed to be effected; or
- (b) Within twenty-one days of giving such notice.

It is also found that payment of compensatory and other allowances are included in item no. 3 of the fourth schedule. So, in the normal course of action, any change in payment of CCA and HRA to its employees by an employer requires a notice under section 9-A of the Act.

However, Section 9-A of the Act provides two exceptions to such normal rules of giving notice. Proviso (a) to Section 9-A of the Act, which is required to be considered in this reference, says that no notice under Section 9-A is required to be given, where the change is effected in pursuance of any settlement or award.

In this reference, it is the admitted case of the parties that by settlements dated 19.10.1966 and dated 17.09.1984, it was agreed by the parties that for the purpose of payment of HRA and CCA respectively, latest available official figure of All India census shall be taken into account. As in this case, it is clear from the materials on record that Kamptee was declared as a "C" class town after segregating the same from Nagpur City Urban agglomeration as per 1991 census, the party No.1 stopped payment of CCA and reduced the rate of HRA to its employees working at Kamptee branch from September, 1994, in pursuance to the settlements dated 19.10.1966 and 17.09.1984, there was no need for party No.1 to give notice under Section 9-A of the Act, before effecting such changes.

13. As it is the admitted case of the parties that payment of CCA and HRA to the employees is governed by the Bi-partite settlements entered into between the Bank and the Unions, payment of CCA and HRA by some other Banks or Offices of the Government to their respective employees working at Kamptee or that party No.1 treats Kamptee branch as a part of Nagpur City for other purposes cannot be taken as valid grounds for claiming CCA and HRA on par with the employees working in different branches of Nagpur City by the union. Hence, it is ordered:-

### **ORDER**

The action of the management of Bank of Maharashtra, Nagpur in reducing the H.R.A. and stopping of payment of C.C.A. w.e.f. September, 1994 to the employees working in the Kamptee Branch of the Bank is proper, legal and justified. The Concerned workmen are not entitled to any relief.

J. P. CHAND, Presiding Officer

नई दिल्ली, 19 सितम्बर, 2014

**का.आ. 2625.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार आंध्रा बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय-2, नई दिल्ली के पंचाट (संदर्भ सं. 63/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19.09.2014 को प्राप्त हुआ था।

[ सं. एल-12012/07/2013-आईआर (बी-II) ]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 19th September, 2014

**S.O. 2625.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 63/2013) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 2, New Delhi as shown in the Annexure, in the Industrial Dispute between the management of Andhra Bank and their workmen, received by the Central Government on 19.09.2014.

[No. L-12012/07/2013-IR (B-II)]

RAVI KUMAR, Section Officer

### **ANNEXURE**

### **BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, KARKARDOOMA COURT COMPLEX, DELHI**

**Present :** Shri Harbansh Kumar Saxena

**ID No. 63/2013**

Sh. Jala Ram, S/o Kapura Ram, 53, Punjabi Basti,  
Rajasthan Colony, New Baljit Nagar,  
New Delhi-110008

### **Versus**

The Manager, Andhra Bank, Plot No.4,  
Sadar Bazar, New Delhi

### **No DISPUTE AWARD**

The Central Government in the Ministry of Labour vide notification No. L-12012/07/2013-IR(B-II) dated 08.05.2013 referred the following industrial Dispute to this tribunal for adjudication :-

“Whether the action of the management of Andhra Bank Sadar Bazar, Delhi in terminating the service of Sh. Jala Ram, Peon is fair & justified? What relief the workman is entitled for?”

On 8.07.13 reference was received in this tribunal. Which was register as I.D No. 63/13 and claimant was called upon to file claim statement within fifteen days from date of service of notice. Which was required to be accompanied with relevant documents and list of witnesses.

After service of notice workman/claimant Sh. Jala Ram not filed claim statement but management in response to reference filed response wherein it mentioned as follows:-

1. It is submitted that the facts stated, averments made and the contentions raised by the workman in the present Industrial dispute are incorrect and untenable in the eyes of law and are therefore liable to be dismissed. It is further submitted that the workman has not approached the Hon'ble Court with clean hands.

2. It is submitted that the respondent/Bank is a Public Sector bank and it is a “State” within the meaning of Article 12 of the Constitution of India. It is bound by the mandate of Part III thereof. It is further submitted that no person can be appointed to a post, in violation of the recruitment norms laid down. It is further submitted that if any appointment is made in violation of the recruitment norms, the appointment becomes void ab initio and it does not confer any right on the person so appointed. That the law in this regard has been laid down by the Hon’ble Supreme Court in the case of Secretary, State of Karnataka and Others Vs. Umadevi and Others.

3. It is submitted that the Present Industrial Disputes petition is liable to be dismissed as it fails to establish or give rise to any cause of action in favour of the applicant covered under section 2A of the Industrial Disputes Act, 1947. In fact the Present original application is filed on frivolous and vexatious grounds to cause undue advantage to the workman/applicant and undue loss for damage/loss to the Bank management/Respondent. It is further submitted that the present application is not maintainable, as respondent/Bank (A Government of India Undertaking) is a public Sector bank and its employees are government/public employees and as public employment in a sovereign, socialist, secular, democratic, republic has to be as set down by the Constitution and the laws made there under. It is further submitted that Equality of opportunity is the hallmark, however, the Constitution has also provided for affirmative action to ensure that unequals are not treated as equals. Thus, any public employment has to be in terms of constitutional scheme wherein a regular process of recruitment or appointment has to be followed. It is further submitted that when regular vacancies /posts, at a particular point of time, are to be filled up, the filling up of those vacancies cannot be done in a haphazard manner or based on patronage or other considerations. It is further submitted that any regular appointment must be in compliance with the equality clause contained in Articles 14 and 16 of the Constitution of India and therefore, any appointment in violation of the said Constitutional scheme as also the statutory recruitment rules, if any, would be void.

4. It is submitted that the respondent /bank had laid down a policy and procedure to be followed in the matter of recruitment for ensuring equality of opportunity to all those desirous of working in the bank. It is further submitted that all appointments including those to the cadre of Part time Sweepers and Subordinate Staff are to be done by following the recruitment norms laid down by the respondent /bank. It is further submitted that only those persons who are sponsored by the Employment Exchange or who have responded to the Notifications issued by the respondent/bank time to time and who fulfill the eligibility criteria prescribed are taken/recruited into

the service of the bank as Part Time Sweepers or Subordinate Staff.

5. It is submitted that the managers of the branches have no power whatsoever to make any appointment in any cadre. It is further submitted that the workman was never appointed at Sadar Bazar branch of the respondent /bank either as a Sweeper or as a Sub-Staff either on casual or on temporary basis at any point of time, therefore the question of his putting in 240 days of service does not arise since he was never appointed in the service of the respondent/bank. It is further submitted that the question of terminating his services does not arise as well since he was never appointed in the service of the respondent/bank. It is further submitted that even if it assumes for a moment that the workman was employed by the respondent/bank on temporary basis for some period, it does not confer any right on him for seeking his absorption in the service of the respondent/bank since his very such appointment being against recruitment norms of the respondent/bank and the law laid down. It is further submitted that it is also against the well established principles, that what cannot be done directly cannot also be done indirectly. That the respondent/bank crave leave to refer to the judgment of the Hon’ble Supreme Court in the matter of Secretary, State of Karnataka V/s Uma Devi, Wherein the Hon’ble Apex Court has held that “Consistent with the scheme for public employment, this court while laying down the law, has necessarily to hold that unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee.” “If it is a contractual appointment, the appointment comes to an end at the end of the contract, if it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued. Similarly, a temporary employee could not claim to be made permanent on the expiry of his terms of appointment. It has also to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment was not made by following a due process of selection as envisaged by the relevant rules. It is not open to the court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad hoc employees who by the very nature of their appointment do not acquire any right.”

6. It is submitted that the workman got a legal notice dated 29.02.2012 served on the respondent/bank making all false claims to which, the workman’s counsel was duly replied to by the respondent/bank vide reply dated 02.04.2012. It is further submitted that despite clear reply from the respondent /bank denying the false claims made by the workman, the workman chose to raise the present dispute with the very same false claims and without submitting any documentary proof in support of his claim.



7. It is submitted that the workman was never appointed in the services of the respondent /bank at any point of time. It is further submitted that the workman has not submitted any documentary proof in support of his said claim. That the respondent/bank crave leave to refer to the judgment of the Hon'ble Apex Court, in the matter of Madhya Pradesh Hasta Shilpa Vikas Nigam Ltd. V/s Devendra Kumar Jain & Ors., JT 1995(1) SC 198, wherein the Hon'ble Apex Court has held (para .5 ) that “ in case of an appointment on a temporary basis, the person does not acquire any substantive right to the post, even though the post itself may be permanent ; and that it is an implied term of such appointment that it may be terminated at any time and without notice”.

8. It is submitted that the workman was never appointed in the service of the respondent /bank to any post either on casual or temporary basis, therefore the question of the respondent /bank paying him a salary of Rs. 80/- per day does not arise. It is further submitted that since the workman was never appointed in the service of the respondent/bank the question of his putting in 240 days of service and confirming /absorbing him into the service of the respondent/bank does not arise. That the respondent/bank in this regard, crave leave to refer to the judgement of the Hon'ble Apex Court in the matter of Mahboob Deepak V/s Nagar Panchayat, Gajraula & Anr, the Hon'ble Apex Court has held that “Due to some exigency of work, although recruitment on daily wages or on an ad hoc basis was permissible, but thereof an employee or made permanent in absence of any statute or statutory rules”. “The Hon'ble Apex Court in the said judgment has further held that, “merely because an employ has completed 240 days of work in a year preceding the date of retrenchment , the same would not mean that his services were liable to be regularized”. The similar kinds of views have been given by Hon'ble Supreme Court in the matters titled as M.P. & Others V/s Lalit Kumar Verma -2007 (1) SCC 575 and Ghaziabad Development Authority & Anr. V/s Ashok Kumar & Anr. 2008(4) SCC 261.

9. It is submitted that since the workman was never appointed in the service of the respondent/bank, the question of his discharging the duties honestly and diligently does not arise. It is further submitted that the workman was never appointed in the services of the respondent/bank, therefore the question of terminating his services does not arise at all.

10. It is submitted that non selection of the workman for the post of Sweeper/Sub- staff when advertised by the respondent/bank and when applied for by the workman, prompted the workman to make a false claim against the respondent/bank that he was taken into respondent/bank's service on temporary basis as a Sweeper/Sub-staff and that he had put in 240 days of continuous service and that his services were wrongfully terminated, when in fact

he was never taken into the service of the respondent/ bank at any point of time either on casual or temporary basis.

11. It is submitted that since the workman was never appointed by the respondent/bank to any post, either on casual or temporary basis, the question of his drawing a salary of Rs. 175/- per day on the date of his alleged termination of service, does not arise at all. It is further submitted that the workman was never appointed in the services of the bank, so the question of terminating his services illegally does not arise and neither the issuance of any written termination letter could have been done.

12. It is submitted that the workman/applicant is neither entitled for reinstatement to the post of the peon nor to the confirmation as a regular employee along with the full back wages and other consequential benefits accrued thereupon , as against the contentions raised by him.

13. It is submitted that the application/petition filed before this Hon'ble Court by the applicant/workman is based on absolutely false, frivolous and baseless allegations and the applicant/workman is not entitled for any relief claimed.

#### PRAYED

In view of the submissions made hereinabove and the peculiar facts and circumstances of the present application /petition, it is most respectfully prayed that this Hon'ble Court may kindly be pleased to:

- Dismiss the present application/petition of the applicant /workman with exemplary cost; and ;
- Pass any such other/further order(s) as the Hon'ble Court may deem fit and proper in the interest of justice.

On the basis of non-interestedness of workman. The proceeding of this case is not liable to be proceeded further. Hence proceedings of the case are liable to be dropped and no dispute award is liable to be passed.

No Dispute Award is accordingly passed.

Dated : 22/08/2014

HARBANSH KUMAR SAXENA, Presiding Officer

नई दिल्ली, 24 सितम्बर, 2014

**का.आ. 2626.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एनटीपीसी-कॉल डैम के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, चंडीगढ़ के पंचाट (संदर्भ सं. 234/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 22.09. 2014 को प्राप्त हुआ था।

[ सं. एल-42011/165/2013-आईआर (डीयू) ]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 24th September, 2014

**S.O. 2626.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 234/2013) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Chandigarh as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of the NTPC-Kol Dam and their workman, which was received by the Central Government on 22.09.2014.

[No. L-42011/165/2013-IR (DU)]

P. K. VENUGOPAL, Section Officer

### ANNEXURE

**BEFORE SHRI SURENDRA PRAKASH SINGH,  
PRESIDING OFFICER, CENTRAL GOVT.  
INDUSTRIAL TRIBUNAL-CUM-LABOUR  
COURT-I, CHANDIGARH**

**Case No. ID 234 of 2013**

Reference No. L-42011/165/2013/IR(DU)  
dated 03.03.2014

Shri Sanjeev Kumar son of Shree Ram  
son of Shri Sunder Singh Sippi (AR),  
House No. 100/3, Raoura Sector-2,  
Bilaspur

...Workman

### Versus

1. The Chief Manager, NTPC,  
Kol Dam office, Barmana,  
Bilaspur
2. Manager, Utility Power Tech Ltd.  
A-6, NTPC Colony Jamthal,  
PO-Jamthal, District Bilaspur,  
Bilaspur (HP)
3. The President, M/s. Koldam  
Oastees Cooperative Sharmik &  
Nirman and Supply Society  
Limited Kasol, PO Bhot Kasol,  
The Sadar, Bilaspur. (HP).

...Respondents

### Appearances :

For the Workman : None  
For the Management : Sh. Pankaj Kumar and  
Vineet Kumar

### AWARD

Passed On : 15.9.2014

Government of India Ministry of Labour vide notification No. L-42011/165/2013/IR(DU) dated 03.03.2014 has referred the following dispute to this Tribunal for adjudication:

### Term of Reference:

“Whether the action of the management of NTPC Koldam/PowerTech Limited M/s. Koldam Oastees Cooperative Sharmik and Nirmal and Supply Society Ltd. in terminating the services of Shri Sanjiv Kumar Ex-Beldar/Helper( Daily Wage Basis) w.e.f. 16.6.09 without any notice and without any payment of retrenchment compensation is just, valid and legal? If not, to what benefits the workman are entitled for and what directions are necessary in the matter?”

2. Case repeated called. Despite repeated opportunities, none appeared for the workman nor has any claim statement been filed. Representatives of the respondents are present. It appears that the workman is not interested to pursue the present reference. In view of the above the present reference is disposed off and answered against the workman as no claim has been lodged on behalf of the workman.

3. Reference is answered accordingly. Central Govt. be informed. Soft copy as well as hard copy be sent to the Central Govt. for publication.

Chandigarh  
15.9.2014

S. P. SINGH, Presiding Officer

नई दिल्ली, 24 सितम्बर, 2014

**का.आ. 2627.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सेंट्रल वेयरहाउसिंग कारपोरेशन के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, चंडीगढ़ के पंचाट (संदर्भ सं. 189/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 22.09.2014 को प्राप्त हुआ था।

[सं. एल-42012/140/2013-आईआर (डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 24th September, 2014

**S.O. 2627.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 189/2013) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Chandigarh now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of the Central Warehousing Corporation and their workman, which was received by the Central Government on 22.09.2014.

[No. L-42012/140/2013-IR (DU)]

P. K. VENUGOPAL, Section Officer

**ANNEXURE****BEFORE SHRI SURENDRA PRAKASH SINGH,  
PRESIDING OFFICER, CENTRAL GOVT.  
INDUSTRIAL TRIBUNAL-CUM-LABOUR  
COURT-I, CHANDIGARH****Case No. ID No. 189 of 2013**Reference No. L-42012/140/2013-IR(DU)  
dated 18.2.2014Sh.Tarsem son of Jeeta Ram,  
Resident of Village & PO Gurthil,  
Tehsil Narwana, Jind

...Workman

**Versus**

1. The Regional Manager, Central Warehousing Corporation, Chandigarh Region, Bay No. 35-38, Sector-4, Panchkula (Haryana)-134112 ...Respondent

**Appearances :**

For the Workman : None  
For the Management : Shri N.K. Zakhmi

**AWARD**

Passed on : 15.09.2014

Government of India Ministry of Labour vide notification No. L-42012/140/2013/IR-(DU) dated 18.2.2014 has referred the following dispute to this Tribunal for adjudication:

**Term of Reference :**

“Whether the action of the Management of Regional Manager, CWC, Panchkula in terminating the services w.e.f. 26.01.2011 of Sh.Tarsem son of Shri Jeeta Ram workman of Narwana Depot is just and legal? If not, to what relief the workman is entitled to ?”

2. Case repeatedly called. None appeared for the workman nor any claim statement has been filed. As per record already three opportunities have been allowed to file claim statement. None appeared on behalf of the workman despite notice. It appears that the workman is not interested to pursue the present reference. In view of the above the present reference is disposed off for want of prosecution.

3. Reference is disposed off accordingly. Central Govt. be informed. Soft copy as well as hard copy be sent to the Central Govt. for publication.

Chandigarh  
15.9.2014

S. P. SINGH, Presiding Officer

नई दिल्ली, 24 सितम्बर, 2014

**का.आ. 2628.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सेंट्रल वेयरहाउसिंग कारपोरेशन के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, चंडीगढ़ के पंचाट (संदर्भ सं. 187/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 22.09.2014 को प्राप्त हुआ था।

[ सं. एल-42012/138/2013-आईआर (डीयू) ]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 24th September, 2014

**S.O. 2628.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 187/2013) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Chandigarh now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of the Central Warehousing Corporation and their workmen, which was received by the Central Government on 22.09.2014.

[No. L-42012/138/2013-IR (DU)]

P. K. VENUGOPAL, Section Officer

**ANNEXURE****BEFORE SHRI SURENDRA PRAKASH SINGH,  
PRESIDING OFFICER, CENTRAL GOVT.  
INDUSTRIAL TRIBUNAL-CUM-LABOUR  
COURT-I, CHANDIGARH****Case No. ID No. 187 of 2013**Reference No. L-42012/138/2013-IR(DU)  
dated 18.2.2014Sh. Ranjit son of Amarjeet  
C/o Shri Manoj son of  
Shri Hawa Singh, Resident of Village  
Hamirgarh, Tehsil Narwana  
District Jind, Haryana

...Workman

**Versus**

1. The Regional Manager, Central Warehousing Corporation, Chandigarh Region, Bay No. 35-38, Sector-4, Panchkula (Haryana)-134112 ...Respondent

**Appearances :**

For the Workman : None  
For the Management : Shri N.K. Zakhmi

**AWARD**

Passed on : 15.09.2014

Government of India Ministry of Labour vide notification No. L-42012/138/2013-IR (DU) dated 18.2.2014 has referred the following dispute to this Tribunal for adjudication:

**Term of Reference :**

“Whether the action of the Management of Regional Manager, CWC, Panchkula in terminating the services w.e.f. 26.01.2011 of Sh. Ranjit son of Shri Amarjeet, workman of Narwana Depot is just and legal? If not, to what relief the workman is entitled to ?”

2. Case repeatedly called. None appeared for the workman nor any claim statement has been filed. As per record already three opportunities have been allowed to file claim statement. None appeared on behalf of the workman despite notice. It appears that the workman is not interested to pursue the present reference. In view of the above the present reference is disposed off for want of prosecution.

3. Reference is disposed off accordingly. Central Govt. be informed. Soft copy as well as hard copy be sent to the Central Govt. for publication.

Chandigarh  
15.9.2014

S. P. SINGH, Presiding Officer

नई दिल्ली, 24 सितम्बर, 2014

**का.आ. 2629.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सेंट्रल वेयरहाउसिंग कारपोरेशन के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, चंडीगढ़ के पंचाट (संदर्भ सं. 186/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 22.09.2014 को प्राप्त हुआ था।

[सं. एल-42012/137/2013-आईआर (डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 24th September, 2014

**S.O. 2629.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 186/2013) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Chandigarh now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of the Central Warehousing Corporation and their workmen, which was received by the Central Government on 22.09.2014.

[No. L-42012/137/2013-IR (DU)]

P. K. VENUGOPAL, Section Officer

**ANNEXURE**

**BEFORE SHRI SURENDRA PRAKASH SINGH,  
PRESIDING OFFICER, CENTRAL GOVT.  
INDUSTRIAL TRIBUNAL-CUM-LABOUR  
COURT-I, CHANDIGARH**

**Case No. ID No. 186 of 2013**

Reference No. L-42012/137/2013-IR(DU)  
dated 18.2.2014

Sh. Pappu son of Shri Ram Dev,  
Resident of Birbal Nagar,  
Narwana, Haryana  
Jind

...Workman

**Versus**

1. The Regional Manager, Central  
Warehousing Corporation,  
Chandigarh Region,  
Bay No. 35-38, Sector-4,  
Panchkula (Haryana)-134112

...Respondent

**Appearances :**

For the Workman : None

For the Management : Shri N.K. Zakhmi

**AWARD**

Passed on : 15.09.2014

Government of India Ministry of Labour vide notification No. L-42012/137/2013-IR (DU) dated 18.2.2014 has referred the following dispute to this Tribunal for adjudication:

**Term of Reference :**

“Whether the action of the Management of Regional Manager, CWC, Panchkula in terminating the services w.e.f. 26.01.2011 of Sh. Pappu son of Shri Ram Dev, workman of Narwana Depot is just and legal? If not, to what relief the workman is entitled to ?”

2. Case repeatedly called. None appeared for the workman nor any claim statement has been filed. As per record already three opportunities have been allowed to file claim statement. None appeared on behalf of the workman despite notice. It appears that the workman is not interested to pursue the present reference. In view of the above the present reference is disposed off for want of prosecution.

3. Reference is disposed off accordingly. Central Govt. be informed. Soft copy as well as hard copy be sent to the Central Govt. for publication.

Chandigarh  
15.9.2014

S. P. SINGH, Presiding Officer



नई दिल्ली, 24 सितम्बर, 2014

**का.आ. 2630.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सेंट्रल वेयरहाउसिंग कारपोरेशन के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, चंडीगढ़ के पंचाट (संदर्भ सं. 185/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 22.09.2014 को प्राप्त हुआ था।

[ सं. एल-42012/136/2013-आईआर (डीयू) ]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 24th September, 2014

**S.O. 2630.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 185/2013) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Chandigarh now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of the Central Warehousing Corporation and their workmen, which was received by the Central Government on 22.09.2014.

[No. L-42012/136/2013-IR (DU)]

P. K. VENUGOPAL, Section Officer

**ANNEXURE**

**BEFORE SHRI SURENDRA PRAKASH SINGH,  
PRESIDING OFFICER, CENTRAL GOVT.  
INDUSTRIAL TRIBUNAL-CUM-LABOUR  
COURT-I, CHANDIGARH**

**Case No. ID No. 185 of 2013**Reference No. L-42012/136/2013-IR(DU)  
dated 18.2.2014

Sh. Manoj son of Shri Hawa Singh,  
Resident of Birbal Nagar,  
Narwana, Haryana  
Jind

...Workman

**Versus**

1. The Regional Manager, Central Warehousing Corporation, Chandigarh Region, Bay No. 35-38, Sector-4, Panchkula (Haryana)-134112 ...Respondent

**Appearances :**

For the Workman : None.  
For the Management : Shri N.K. Zakhmi

**AWARD**

Passed on : 15.09.2014

Government of India Ministry of Labour vide notification No.L-42012/136/2013-IR (DU) dated 18.2.2014 has referred the following dispute to this Tribunal for adjudication:

**Term of Reference :**

“Whether the action of the Management of Regional Manager, CWC, Panchkula in terminating the services w.e.f. 26.01.2011 of Sh. Manoj son of Shri Hawa Singh, workman of Narwana Depot is just and legal? If not, to what relief the workman is entitled to ?”

2. Case repeatedly called. None appeared for the workman nor any claim statement has been filed. As per record already three opportunities have been allowed to file claim statement. None appeared on behalf of the workman despite notice. It appears that the workman is not interested to pursue the present reference. In view of the above the present reference is disposed off for want of prosecution.

3. Reference is disposed off accordingly. Central Govt. be informed. Soft copy as well as hard copy be sent to the Central Govt. for publication.

Chandigarh  
15.9.2014

S. P. SINGH, Presiding Officer

नई दिल्ली, 24 सितम्बर, 2014

**का.आ. 2631.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सेंट्रल वेयरहाउसिंग कारपोरेशन, मदुरै के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ सं. 37/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 12.09.2014 को प्राप्त हुआ था।

[ सं. एल-42011/09/2012-आईआर (डीयू) ]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 24th September, 2014

**S.O. 2631.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 37/2012) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of the Central Warehousing Corporation, Madurai and their workmen, which was received by the Central Government on 12.09.2014.

[No. L-42011/09/2012-IR (DU)]

P. K. VENUGOPAL, Section Officer

**ANNEXURE****BEFORE THE CENTRAL GOVERNMENT  
INDUSTRIAL TRIBUNAL-CUM-LABOUR  
COURT, CHENNAI**

Thursday, the 28th August, 2014

**Present :** K. P. PRASANNA KUMARI, Presiding Officer**Industrial Dispute No. 37/2012**

[In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 to the Industrial Disputes Act, 1947 (14 of 1947), between the Management of Central Warehousing Corporation and their workman].

**Between :**

The General Secretary : 1st Party/Petitioner Union  
General Labour Union  
31, Nanmai Tharuvar  
Koil Arisikara Street  
Madurai-625001

**And**

The General Manager : 2nd Party/Respondent  
Central Warehousing  
Corporation,  
Palanganatham,  
Madurai

**Appearance :**

For the 1st Party/ : M/s. V. Ajoy Khose,  
Petitioner Union S. Manogaran, Advocates  
For the 2nd Party/ : M/s. P. D. Audikesavalu,  
Management C. K. Chandrasekar,  
Advocates

**ORDER**

The Central Government, Ministry of Labour and Employment vide its Order No. L-42011/09/2012-IR (DU) dated 21.06.2012 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is:

“Whether the action of the Management of Central Warehousing Corporation, Palangantham, Madurai for not providing wage increase, bonus, etc. in respect of casual labour of Central Warehousing Corporation, Palangantham, Madurai is justified or not? To what relief the workmen are entitled?”

2. On receipt of the Industrial Dispute this Tribunal has numbered it as ID 37/2012 and issued notices to both sides. Both sides have entered appearance through their counsel and filed their claim and counter statement respectively.

3. The averments in the Claim Statement filed by the petitioner in brief are these

The Respondent is a Government of India Undertaking functioning under the Control of Ministry of Consumer Affairs, Food and Public Distribution. It provides warehousing services to mill owners, wholesale marketing agencies, distributors who are dealing with essential commodities, etc. The Respondent will collect charges from the above persons for using the warehousing facilities. The warehousing corporation has a branch at Palangantham. The loading and unloading of the items brought to the warehouse is done by 23 workmen employed by the Respondent. Apart from loading and unloading, the workmen are carrying out various work such as stacking, de-stacking, re-stacking, fumigation, brushing, cleaning, spraying, sweeping, hygiene maintenance, etc. inside the godown. Loading and unloading work would be available only for limited hours. The main work of the workmen is the maintenance work in the godown. The workmen will have to report for work at 0800 AM in the morning and have to remain there till 0600 PM on all six working days. Though the Respondent is employing the workmen on daily rated basis, the Respondent is not paying the entire amount fixed for the work of fumigation, spraying, etc. only lesser amount than what is fixed by the Warehouse Manager is paid to them. The workmen are now paid @ 147/- per day only. They are not paid any wages for weekly holidays. They are not given any benefits under the PF Act, ESI Act, Payment of Bonus Act and other labour welfare legislations. 12 workmen concerned in the dispute are members of the petitioner union. The union had submitted letter to the Respondent alongwith a charter of demands requesting to hold talk with them. The Respondent did not give any reply to this letter. So the dispute has been raised by the petitioner union. An order may be passed holding that the action of the Respondent in not making the 12 workmen permanent, in not extending the benefits available to the workmen to them and not extending the statutory benefits such as PF, ESI etc. are unjustified. The Respondent may be directed to make all the 12 workmen permanent from the date of their joining with time scale of pay, allowances and all other benefits as applicable to regular, permanent Group D employee with arrears and may also direct the Respondent to extend the benefits as provided under the PF Act and ESI Act, to pay minimum bonus from the accounting year 2008-2009, to provide 3 sets of uniform to each workman every year, to pay Rs. 50 per month towards washing allowance, to provide a pair of chappal for each workmen and also to provide rest house and dining hall.

4. The Respondent has filed Counter Statement contending as follows:

The Respondent is Government of India Undertaking functioning under the Ministry of Consumer Affairs, Food and Public Distribution. The function of the Respondent is to preserve foodgrains and other

essential commodities which are brought to the warehouse for storage. Govt. as well as private agencies are availing the services of the Respondent Corporation. The corporation collects charges from the users for the stocks stored in the warehouse. The warehouse at Palanganatham, Madurai is in existence since 1965. The workmen are engaged for loading and unloading, stacking, de-stacking, re-stacking, fumigation, brushing, cleaning, spraying, sweeping and other incidental operations by the users of the warehouse through labour maistry at the warehouse. The corporation is not engaging any casual labour directly for such works as it is providing the warehouse to store goods only. The users of the warehouse engage men to do the required work. The work is dependent on arrival of loads and is not regular in nature. There is no necessity for engaging labour on all working days. There is no employer-employee relationship between the workers and the Respondent Corporation. Amounts are paid to labour maistry who engage workforce to do the necessary works. The workmen are not entitled to regular employment at the warehouse. There is no prohibition for the Respondent to engage contract workers in ancillary works. So the claim for regular employment by the workers is not tenable. The petitioner is not entitled to any relief.

5. The evidence in the case consists of oral evidence of WW1 and MW1 and documents marked as Ext.W1 to Ext.W8.

6. The points for consideration are:

- (i) Whether the workmen involved in the dispute are entitled to regularization with other benefits as claimed in the Claim Statement?
- (ii) What is the relief, if any, to which they are entitled?

### The Points

7. The Petitioner Union has raised the dispute on behalf of certain workers who are said to be doing the work of loading, unloading and other allied works attached to the godown of the Respondent at Palangantham. According to the petitioner, the workers are paid on daily rated basis. However, they are not paid the entire amount fixed by the Warehouse Manager. It is further stated that they are not given the benefits contemplated under the PF Act, ESI Act, Factories Act, Minimum Wages Act and Bonus Act. The Petitioner Union had given a letter to the Respondent with a charter of demands. However the Respondent did not respond to the same. It is accordingly the dispute was raised. In answer to the claim of the petitioner the Respondent has contended that there is no employer-employee relationship between the concerned workmen and the Respondent at all. According to the Respondent the workmen are employed by the users of the warehouse

through the labour maistry. Their work is not regular in nature also. The quantum of work depends on the quantity of commodity that comes to the warehouse for storage. According to the Respondent it is not liable to pay any benefits to the workmen since they are not the workmen of the Respondent.

8. The General Secretary of the Petitioner Union has given evidence reiterating the claim in the petition. Ext.W1 and Ext.W8 are the only documents produced on behalf of the petitioner to substantiate the case. The other documents are the charter of demands submitted by the petitioner to the Respondent, the statement given before the Asstt. Labour Commissioner (C), reply etc. and have nothing to do with the employment of the concerned workmen under the Respondent.

9. On perusal of Ext.W1, it could be seen that it will not substantiate the case of the petitioner in any manner. This is only a proforma for the proposal of engaging casual labour for the month of January, 2008. MW1 has explained during his cross-examination that it is the estimate of casual labourers to be engaged to carry out the quality control work in the godown. Column-13 of Ext.W1 itself would show that the workers are engaged through labour maistry. Ext.W8 is purported to be the copy of the attendance register pertaining to the concerned workmen. Though the name of Central Warehousing Corporation, the Respondent is given at the top in every page of this document this does not contain any signature of any official of the Respondent. It does not even show that it is an Attendance Register. The petitioner has not stated how this document came to its hand. According to MW1, the Regional Manager of Central Warehousing Corporation, records of names of the worker are not maintained with the Respondent. Whoever is brought by the Contractor will be doing the work. Records will be maintained by the Respondent only to account the numbers of casual labourers engaged.

10. The petitioner was not able to show that the concerned workmen were employed by the Respondent directly. On the other hand, the Ext.W1 the very document produced by the petitioner would show that the workers are engaged through labour maistry. WW1 who is the Secretary of the Union has admitted that the Respondent Corporation is at liberty to appoint workers as per the provisions of the Contract Labour (Regulation & Abolition) Act. Thus there is nothing to show that the concerned workmen are directly employed by the Respondent.

11. The counsel for the Respondent has referred to the decision in INTERNATIONAL AIRPORT OF INDIA Vs. INTERNATIONAL AIR CARGO WORKERS UNION AND ANOTHER reported in AIR 2009 SC 3063 where the Apex Court has held that in the absence of a notification under Section-10 of Contract Labour

(Regulation & Abolition) Act prohibiting the employment of contract labour, the workmen employed as contract labour are not entitled to claim absorption.

12. The petitioner having failed to establish that the concerned workmen are directly employed by the Respondent, they are not entitled to absorption or any other benefit claimed by the petitioner.

13. In view of my discussion above, the reference is answered against the petitioner.

An award is passed accordingly.

K. P. PRASANNA KUMARI, Presiding Officer

#### Witnesses Examined :

For the 1<sup>st</sup> Party/ : WW1, Sri R. Vellaichamy  
Petitioner Union

For the 2<sup>nd</sup> Party/ : MW1, Sri A.T. Sankar  
Management

#### Documents Marked :

##### On the petitioner's side

Ex.No.	Date	Description
Ex.W1	04.01.2008	Proposal order for engaging Casual Labour issued by the 2 <sup>nd</sup> Party
Ex.W2	-	Charter of Demands submitted by the 1 <sup>st</sup> Party Union
Ex.W3	-	Dispute raised by the 1 <sup>st</sup> Party Union before the Asstt. Labour Commissioner (Central), Madurai
Ex.W4	08.07.2011	Reply filed by the 2 <sup>nd</sup> Party Management before the Asstt. Labour Commissioner
Ex.W5	30.08.2011	Rejoinder filed by the 1 <sup>st</sup> Party Union
Ex.W6	30.09.2011	Failure Report
Ex.W7	21.06.2012	Order of Reference
Ex.W8	-	Copy of the Attendance Register pertaining to the workmen concerned.

##### On the Management's side

Ex.No.	Date	Description
	N/A	

नई दिल्ली, 24 सितम्बर, 2014

**का.आ. 2632.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार डिपार्टमेंट ऑफ टेलीकम्यूनिकेशन, भोपाल के प्रबंधन के संबद्ध नियोजकों और

उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ सं. सीजीआईटी/एलसी/आर/13/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 22.09.2014 को प्राप्त हुआ था।

[सं. एल-40012/384/2000-आईआर (डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 24th September, 2014

**S.O. 2632.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. CGIT/LC/R/13/2001) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of the Department of Telecommunication, Bhopal and their workmen, which was received by the Central Government on 22.09.2014.

[No. L-40012/384/2000-IR (DU)]

P. K. VENUGOPAL, Section Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

#### NO. CGIT/LC/R/13/2001

PRESIDING OFFICER: SHRI R.B. PATLE

Shri Prakash Bairagi,  
S/o Shri Babudas Bairagi,  
Village Piroudha,  
Khurd, PO Guna,  
Guna

...Workman

#### Versus

Chief General Manager,  
Deptt. Of Telecommunication,  
Hoshangabad Road,  
MP Circle,  
Bhopal (MP)

District Engineer (Phones),  
Guna

...Managements

#### AWARD

Passed on this 4<sup>th</sup> day of September, 2014

1. As per letter dated 17-11-2000 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section 10 of I.D.Act, 1947 as per Notification No.L-40012/384/2000/IR(DU). The dispute under reference relates to :



“Whether the action of the management of District engineer (Phones), Guna in terminating the services of Shri Prakash Bairagi S/o Shri Babudas Bairagi w.e.f. 21-2-98 is justified? If not, to what relief the workman is entitled?”

2. After receiving reference, notices were issued to the parties. Ist party workman filed statement of claim at Page 4/1 to 4/5. Case of the workman is that he was appointed in General cadre from 16-4-88. Order in writing was not given to him. That workman was required to carry work of various nature. He was doing work assigned to him by the management. Workman was in continuous service till 21-2-98. That he had completed 240 days continuous service during each of the calendar year. He claims to be employee under Section 25(B) of I.D.Act. from 21-2-90, he was prevented from carrying his duties. Workman had requested for regularization of his service and equal wages for equal work. His services were not regularized by IInd party. He was discriminated in payment of wages. His services were discontinued in violation of Section 25-F of I.D.Act. He was not given opportunity of hearing, termination of his service in illegal. On such ground, workman prays for his reinstatement with full back wages.

3. IInd party management filed Written Statement at page 6/1 to 6/3. Claim of workman is denied outright. That IInd party submits that workman was not appointed by the department. Workman was engaged for petty works in department as labour. After completion of specified petty works, the engagement automatically comes to end. It does not amount to retrenchment. When new works are undertaken, the labours are engaged as per requirement. The local officer makes labour payments. It was made clear to the labours that after completion of workman, they would not be continued. That since 1985, muster roll was discontinued. Workman has not produced any documents about his working.

4. IInd party denies that workman completed 240 days continuous service in each of the year. For casual nature of work, provisions of Section 25 B of I.D.Act are not attracted. It is not necessary to give notice of pay, retrenchment compensation when workman was engaged for petty works in the department and after completion of work, workman could not be engaged without work. Violation of Section 25-F is denied. All those contentions are reiterated by IInd party. IInd party denied violation of Section 25-G, H of I.D.Act. since 1998, workmen were engaged on contract basis through tender. Department needs to complete specific work. As per policy of telecom department, no labour was to be appointed on daily wages since 1985. All material contentions of workman are denied. IInd party prays for rejection of claim.

5. Workman submitted rejoinder at Page 8/1 to 8/2 reiterating his contentions in statement of claim.

6. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

- |  |                    |
|--|--------------------|
| (i) Whether the action of the management of District engineer (Phones), Guna in terminating the services of Shri Prakash Bairagi S/o Shri Babudas Bairagi w.e.f. 21-2-98 is justified? | In Negative        |
| (ii) If not, what relief the workman is entitled to?”  | As per final order |

### REASONS

7. Workman is challenging termination of his service for violation of Section 25-F, H of I.D.Act. IInd party denies all material contentions of workman that workman was not appointed by department rather he was engaged for petty works. On completion of work, his employment could not be continued.

8. Workman has filed affidavit of his evidence supporting his contentions in statement of claim that from 16-4-88 till 21-2-98, he was continuously working with IInd party without any break. He was prevented from attending duties from 21-2-98. That he completed 240 days continuous service during each year. His services are terminated in violation of provisions of I.D.Act. In his cross-examination, workman says he passed 5<sup>th</sup> standard. He has submitted affidavit of his evidence in Hindi and not in English. The post was not advertised before his appointment. Appointment letter was not given to him. He was working under SDO from 16-4-88. He was doing work of digging ditches, erecting poles for laying cables. He denies that he was working under contractor. His wages were paid by SDO. Suggestion is denied that he not completed 240 days continuous service.

9. Management's witness Rajendra Prasad in his affidavit of evidence says that workman was never engaged by the management. Workman never rendered any service in the department on casual basis or other work. In his cross-examination, witness says from April, 88 to February 98, he was not working in Guna office of BSNL. He explained that he was working at Ashok Nagar, District Guna. There is superior officer at Guna. That he has no personal knowledge about casual daily wages, badlies employed in the Guna office during 1988 to 1998. He claims ignorance about payment of wages as per muster register. He claims ignorance whether workman was working on daily wages from 1988 to 1998. Management's witness has no personal knowledge. The evidence of management's witness is inconsistent with the pleadings of IInd party in Written Statement. In para-3 of Written Statement, IInd party has completed that

only for petty works in department, few labours were engaged for different nature of work. After completion of specified petty works, the engaged labour automatically discontinued. It does not amount to retrenchment whereas management's witness in his affidavit says that workman was not engaged for any kind of work including casual labour. The evidence is inconsistent with pleadings and management's witness has no personal knowledge about workman. This cannot be preferred to discard evidence of workman. Evidence of workman in his cross-examination is cogent that he was working under SDO. His wages were paid by SDO and he was not working with contractor. The suggestion is given to the witness about his working with contractor. The evidence of management's witness on above point is silent, no documents are produced in that regard. Therefore I accept evidence of workman. His services are terminated without notice, no retrenchment compensation is paid to him therefore termination of services of workman in violation of Section 25-F is illegal. For above reasons, I record my finding in Point No.1 in negative.

10. **Point No.2-** in view of my finding in Point No.1, termination of workman is illegal, question arises whether he is entitled for reinstatement with back wages. The cross-examination of workman shows the post was not advertised. Appointment letter was not given to him. He was engaged on daily wages. Therefore the legal position is settled that labours engaged on daily wages de hors the rules should not be reinstated rather reasonable compensation should be awarded. Considering workman was working from April 88 to February, 98, for more than 9 years, compensation Rs. One Lakh would be reasonable. Accordingly I record my finding in Point No.2.

11. In the result, award is passed as under:-

- (1) The action of the management of District engineer (Phones), Guna in terminating the services of Shri Prakash Bairagi S/o Shri Babudas Bairagi w.e.f. 21-2-98 is not just and legal.
- (2) IInd party is directed to pay compensation Rs. One Lakh to the workman.

Amount as per above order shall be paid to workman within 30 days from the date of notification of award. In case of default, amount shall carry 9 % interest per annum from the date of award till its realization.

R. B. PATLE, Presiding Officer

नई दिल्ली, 24 सितम्बर, 2014

**का.आ. 2633.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सिक्वोरिटी पेपर मिल, होशंगाबाद के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार

औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ सं. सीजीआईटी/एलसी/आर/32/89) को प्रकाशित करती है, जो केन्द्रीय सरकार को 22.09.2014 को प्राप्त हुआ था।

[सं. एल-16012/2/87-डी-II (बी)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 24th September, 2014

**S.O. 2633.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. CGIT/LC/R/32/89) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of the Security Paper Mill, Hoshangabad and their workman, which was received by the Central Government on 22.09.2014.

[No. L-16012/2/87-D-II (B)]

P. K. VENUGOPAL, Section Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/32/89

PRESIDING OFFICER: SHRI R.B. PATLE

Shri M.L. Awadhiya,  
Ex.UDC, Gawaltoli,  
Thapkaji House,  
Behind Rly. Station,  
Hoshangabad

...Workman

#### Versus

General Manager,  
Security Paper Mill,  
Hoshangabad

...Management

#### AWARD

Passed on this 10<sup>th</sup> day of September, 2014

1. As per letter dated 1-2-89 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No. L-16012/2/87-D-II(B). The dispute under reference relates to:

“Whether the action of the management of Security Paper Mill, Hoshangabad in terminating the services of Shri M.L. Awadhiya *vide* order No. A.D./19/CS-108 dated 9-5-84 is legal and justified? If not, to what relief the workman is entitled to?”

2. After receiving reference, notices were issued to the parties. Ist party workman submitted statement of

claim at page 4/1 to 4/4. Case of Ist party is that he was employed as permanent UDC in establishment of IInd party. Chargesheet was issued to him under Rule 1965 about unauthorized absence from duty. That due to illness of his mother and his son, he was on leave on many occasions. He had submitted applications time to time supported by Medical Certificates for his absence from 1-5-81 to 15-10-81. The decision on application for leave was not intimated to him. That he was not unauthorisely absent alleged in the chargesheet. He submitted application for leave. Leave was at his credit. The allegation issued in chargesheet was denied by him. Disciplinary Authority ordered to conduct enquiry against him. He was not supplied any documents alongwith chargesheet. Statements of witnesses were not supplied to him. Enquiry was conducted exparte in violation of principles of natural justice.

3. It is further submitted that on 7-10-82, he submitted application for adjournment of enquiry for his illness though enquiry was fixed, he was never informed by Enquiry Officer. On 10-2-83, 17-2-83, workman submitted application alongwith medical certificate for adjournment of enquiry. Workman attended Enquiry proceedings on 1-4-83, 11-4-83, 6-9-83, 9-9-83. The principles of natural justice were violated. On 20-4-83, he submitted application alongwith medical certificate requesting adjournment of enquiry. However he was not informed by Enquiry officer the next date of enquiry. It is reiterated that enquiry was conducted exparte.

4. 2<sup>nd</sup> chargesheet was issued to him on 23-12-83 without enclosing any documents. It was held that the workman refused notice and it was not possible to conduct enquiry against him. Order of removal from service was passed without issuing showcause notice. Copy of Enquiry Report was not served on him. Workman was not given opportunity for his defence therefore the order of his removal is illegal. On such ground, workman prays for his reinstatement with back wages.

5. IInd party filed Written Statement at Page 3/1 to 3/9. IInd party submits that workman was initially appointed as LDC on 9-11-66 at SPM Hoshangabad. On 3-9-69, he was promoted as UDC. He was regular in service till 1975. Thereafter workman was not punctual in his duties. He was frequently absent from duties. In 1976, workman was granted regular leave, apart from 12 days CL in the year 1976 on 9 occasions, in 1977- 10 occasions, in 1978- 11 occasions, in 1979- 14 occasions, in 1980- 19 occasions. His leave were sanctioned only after availing the leave. In 1979, chargesheet was issued to workman, penalty of censure was imposed on 22-1-81. Workman remained absent for 21 occasions during 4 months from April 1981. The details of his absence from duties are narrated in the Written Statement. Workman was unauthorisely absent from 1-5-81 despite

of memos dated 21-5-81, 27-7-81, 13-8-81, 18-8-81. Workman not attended duties. He remained absent. Chargesheet was issued to him on 6-11-81. Workman had submitted various applications. Some of the applications were supported by medical certificates of Private Practitioners. In some applications, the nature of leave asked was not mentioned. It is reiterated that chargesheet was issued to workman, enquiry was conducted. Workman did not attended Enquiry Proceedings. Consequently enquiry was conducted exparte. It is denied that principles of natural justice were not followed by Enquiry Officer. It is reiterated that the workman was absent till 15-10-81. He was also unauthorisely absent subsequently and did not turn up on duty till 21-2-83. The period of absence of workman in April 83 was 8 ½ days, in May 83- for 15 days, in June 83- 14 days, in July 83- 17 ½ days, in August 83-29 days and in September 83 for 16 days. The workman was remaining absent from duty after receiving the report of Enquiry officer, workman was dismissed from service. The appeal preferred by workman was rejected by Appellate Authority after careful consideration. The order for removal of workman is proper and legal.

6. Ist party workman submitted rejoinder at Page 8/1 to 8/2 reiterating his contentions in statement of claim. He further submitted that Enquiry Officer did not allow him opportunity for inspection of documents. Enquiry Officer exceeded his jurisdiction with a predetermined mind to get the charges proved against him. The medical certificates and applications submitted by Non-applicant were not considered. Additional rejoinder is also filed by workman at page 9/1 to 9/2 contending that he was not given proper opportunity for his defence.

7. As per order dated 15-4-2013, enquiry conducted against workman is found legal. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

- |       |  |  |
|-------|--|--|
| (i)   | Whether the charges of alleged misconduct against workman are proved from evidence in Enquiry Proceedings? | Affirmative                            |
| (ii)  | Whether punishment of removal awarded against workman is proper and legal?                                 | In Affirmative                         |
| (iii) | If so, to what relief the workman is entitled to?"   | Workman is not entitled to any relief. |

### REASONS

8. Considering pleadings, my predecessor has framed issues on 18-3-91 in view of enquiry conducted against workman is found legal, Issue No.2 doesnot survive. Management is not required to prove charges by adducing

evidence. In view of enquiry conducted against workman is found proper and legal, question arises whether misconduct of unauthorized absence alleged against workman is proved from evidence in Enquiry Proceedings. That the punishment of removal from service is illegal. The evidence in Enquiry Proceedings needs to be considered. Enquiry Officer has considered charges against workman at Page 3/38 of Enquiry Proceedings and various applications submitted by workman. The memos issued to Ist party workman on different dates at page 3/41 of Enquiry Proceedings, Enquiry Officer observed perusal of the events narrated above under part-3. Summary of events emerged during enquiry will give a factual position of the case. It is established beyond doubt that during the period of charge sheet i.e. from 1-5-81 to 15-10-81, Shri M.L.Awadhiya UDC was present in the office only for 3 days i.e. on 5-5-81, 30-5-81 and 4-8-81. That Shri M.L.Awadhiya was availing leave without prior permission or sanction of leave. Merely sending application doesnot give right to anyone to avail leave. It is the duty of the Govt. servant to see that the leave applied for is sanctioned by a Competent Authority empowered to sanction such leave. No such formal orders sanctioning leave to him have been issued in any of the cases and he is fully aware of the position. That as much as 4 memos were issued directing him to report for duty forthwith. His absence from duty was unauthorised. Even pleadings of his statement of claim finds reference that he submits application for leave. His leave applications were not sanctioned therefore the findings of Enquiry Officer cannot be said perverse. In absence of workman from duty without sanctioned leave, certainly amounts to unauthorized absence. Therefore I record my finding on Point No.1 in Affirmative.

9. **Point No.2-** Charge against workman is of unauthorized absence from 1-5-81 to 15-10-91. Even his absence from duty for subsequent period is also alleged. Workman was working as UDC with IInd party.

10. Learned counsel for IInd party Shri A.K.Shashi relies on ratio held in

Case of U.P.State Warehousing Corporation and Another versus Presiding Officer and another reported in 2013-III-LLJ-213(Allahabad). His Lordship dealing with burden of proof held Labour Court considering that petitioners failed to prove that workers were engaged by contractors and directed reinstatement. Held person who files a claim is required to prove his case. Industrial dispute raised by Union, burden of proof is upon Union and its workers to prove their claim before Labour Court.

In present case, the absence from duty of workman is not disputed. Rather he submits that he submitted applications for leave alongwith medical certificates were

not considered. The leave was not sanctioned to him despite of it workman was absent. His absence from duty is certainly unauthorized.

Next reliance is placed in case of North West Karnataka Road Transport Corporation versus Shri S.D.Nadavinkeri, Bihapur reported in 2013-137-FLR-619. His Lordship dealing with dismissal from service of respondent Helprr dismissed. For remaining unauthorisedly absent. After enquiry and showcase notice. Labour Court set aside the order of dismissal and directed to withhold five annual increments and to reinstate without back wages. The said award was quashed by Hon'ble High Court.

In present case, at relevant time, workman was working as UDC. He was frequently absent. As per his own pleadings, his leave was not sanctioned. I find no reason to interfere with the punishment of dismissal from service. For above reasons, I record my finding in Point No.2 in Affirmative.

11. In the result, award is passed as under:-

- (1) The action of the management of Security Paper Mill, Hoshangabad in terminating the services of Shri M.L. Awadhiya is legal and proper.
- (2) Workman is not entitled to any relief.

R. B. PATLE, Presiding Officer

नई दिल्ली, 24 सितम्बर, 2014

**का.आ. 2634.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार डिपार्टमेंट ऑफ टेलीकम्यूनिकेशन, भोपाल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ सं. केस सं. सीजीआईटी/एलसी/आर/12/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 22.09.2014 को प्राप्त हुआ था।

[सं. एल-40012/385/2000-आईआर (डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 24th September, 2014

**S.O. 2634.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. Case No. CGIT/LC/R/12/2001) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of the Department of Telecommunication, Bhopal and their workmen, which was received by the Central Government on 22.09.2014.

[No. L-40012/385/2000-IR (DU)]

P. K. VENUGOPAL, Section Officer



**ANNEXURE****BEFORE THE CENTRAL GOVERNMENT  
INDUSTRIAL TRIBUNAL-CUM-LABOUR  
COURT, JABALPUR****NO. CGIT/LC/R/12/2001**

PRESIDING OFFICER: SHRI R.B.PATLE

Shri Hiralal Kori,  
S/o Chintulal Kori  
Village Imjhara,  
Po Magrainia, Guna

...Workman

**Versus**

Chief General Manager,  
Deptt. of Telecommunication,  
Hoshangabad Road,  
MP Circle,  
Bhopal (MP)

District Engineer (Phones),  
Guna

...Managements

**AWARD**Passed on this 4<sup>th</sup> day of September, 2014

1. As per letter dated 17-11-2000 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-40012/385/2000/IR(DU). The dispute under reference relates to:

“Whether the action of the management of District Engineer (Phones), Guna in terminating the services of Shri Hiralal Kori, s/o Shri Chintulal Kori w.e.f. 21-2-98 is justified? If not, to what relief the workman is entitled?”

2. After receiving reference, notices were issued to the parties. Workman died during pendency of reference. His LRs Janki Bai, Krishna Kori, Rahul Kori & Rohit Kori are substituted on record. The deceased workman submitted statement of claim at Page 4/1 to 4/5. Case of workman is that he was appointed in General Cadre from March 1991. He was assigned job of various nature. He was continued in service till 1-2-98. He completed 240 days continuous service during each of the calendar year. He is covered as employee under Section 25(B) of I.D.Act. from 21-2-98, IInd party prevented him from duties. That his services are terminated without notice when he claimed for regularization of service and equal pay for equal work. Termination of his service is in violation of Section 25-F, G & H of I.D.Act. On such grounds, workman prays for reinstatement with back wages.

3. IInd party filed Written Statement at Page 6/1 to 6/3. Claim of workman is totally denied. As per IInd party workman was not offered employment on any post in Telecom Department. Such appointments are not

permissible as per rules. Workman was engaged only for petty works in department. Few labours engaged for various nature of specified petty works, they were not continued. It doesnot amount to retrenchment. Workman engaged for petty works were paid their wages by Local Officer. After completion of work, the workmen can not be continued. From 1985, the engagement of daily wages labours is completely prohibited. IInd party denies that workman completed 240 days continuous service. Termination of service for violation of Section 25-F, G, H of I.D.Act is denied. That since 1998, workmen were engaged on contract basis through tender. In engagement of casual labours, provisions of ID Act are not applicable. IInd party prays for rejection of claim.

4. Workman filed rejoinder at Page 8/1 to 8/2 reiterating his contentions in statement of claim.

5. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the action of the management of District Engineer (Phones), Guna in terminating the services of Shri Hiralal Kori, s/o Shri Chintulal Kori w.e.f. 21-2-98 is justified? In Negative

(ii) If not, what relief the workman is entitled to? As per final order

**REASONS**

6. Ist party workman is challenging termination of his services for violation of Section 25-F, G, H of I.D.Act claiming that he was appointed by IInd party from March 91 in General Cadre. He was continuously working till 1-2-1998. His services were terminated without notice in violation of Section 25-F of I.D.Act. IInd party denies all material contentions of workman. It is submitted that for petty works, labours were engaged as such labours were paid wages by Local Officer.

7. Workman filed affidavit of evidence supporting his contentions in statement of claim. However he died before his cross-examination. Janki bai widow of deceased workman filed affidavit of her evidence. She stated that her husband was working with District Engineer, Phones, Guna during the period 90 to 8. In her cross-examination, she says that affidavit of her evidence was prepared by her Advocate in Hindi and thumb mark was obtained. The affidavit was readover to her. However the affidavit of her evidence is found in English. The material contentions in her affidavit that her husband was working in Telecom Deptt. was not shattered. She re-affirmed that her husband was working telecom department from 1991. Her husband was doing work of repairing of telephone lines. Her husband was not working under contractor. She denies that her husband did not complete 240 days working.

8. Management witness Shri Rajendra Prasad Sharma in his affidavit of evidence supported contentions in Written Statement of IInd party. He says that workman was never engaged by management. He had never rendered services for department on casual basis or other works. The evidence of management's witness is inconsistent with pleadings in Written Statement of IInd party. In para-3 of the Written Statement, IInd party has pleaded that for petty works in department few labours were engaged in various nature of work. After completion of petty work, labours were alternatively discontinued. Application for production of document was filed by Ist party workman. IInd party in reply to said application pleaded that workman was not appointed neither retrenched by the department.

9. As per pleadings in Para-3 of the Written Statement. The casual workers were engaged for specified work. Wages were paid by local officers, its record were not produced by management. Management's witness in his cross-examination says that he has no knowledge about the record maintained about casual daily wage employees. Any badli employees were not engaged in his office, no record is maintained about them. He claims ignorance whether muster roll about casual employee/ daily wage employee was maintained in the office and wages paid as per said register. The evidence of management's witness is inconsistent with pleadings in Written Statement. He has no personal knowledge about casual employees engaged in the department. Under such set of facts when management is not producing the documents, the evidence of widow of deceased workman deserves to be accepted. The evidence on record shows workman was continuously working from 1991 to February 1998, his services are terminated without notice in violation of Section 25-F of I.D.Act. Therefore I record Point No.1 in Negative.

10. **Point No.2-** in view of my finding in Point No.1, termination of deceased workman is illegal, LRs are brought on record, in view of death of workman reinstatement cannot be granted. Reasonable compensation would be appropriate relief. In my considered view, considering length of service from 1991 to 1998, compensation Rs. 75,000/- would be reasonable. Accordingly I record my finding in Point No.2.

11. In the result, award is passed as under:-

- (1) The action of the management of District Engineer (Phones), Guna in terminating the services of Shri Hiralal Kori, s/o Shri Chintulal Kori w.e.f. 21-2-98 is not proper and legal.
- (2) IInd party is directed to pay compensation Rs. 75,000/- to the LRs of the deceased workman.

Amount as per above order shall be paid to workman within 30 days from the date of notification of award. In case of default, amount shall carry 9 % interest per annum from the date of award till its realization.

R. B. PATLE, Presiding Officer

नई दिल्ली, 24 सितम्बर, 2014

**का.आ. 2635.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार डिपार्टमेंट ऑफ टेलीकम्यूनिकेशन, भोपाल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ सं. केस सं. सीजीआईटी/एलसी/आर/35/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 22.09.2014 को प्राप्त हुआ था।

[सं. एल-40012/299/99-आईआर (डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 24th September, 2014

**S.O. 2635.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. Case No. CGIT/LC/R/35/2000) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of the Department of Telecommunication, Bhopal and their workmen, which was received by the Central Government on 22.09.2014.

[No. L-40012/299/99-IR (DU)]

P. K. VENUGOPAL, Section Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/35/00

PRESIDING OFFICER: SHRI R.B.PATLE

Shri Alemsingh

S/o Amarsingh,

Vill Godana,

Shajapur

...Workman

#### Versus

Chief General Manager,

Deptt. of Telecommunication.

Hoshangabad Road,

MP Circle,

Bhopal

...Management

#### AWARD

Passed on this 5<sup>th</sup> day of September, 2014

1. As per letter dated 27-1-2000 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under

Section 10 of I.D.Act, 1947 as per Notification No. L-40012/299/99/IR(DU). The dispute under reference relates to:

“Whether the action of the management of Chief General Manager, Telecom in terminating the services of Shri Alemsingh S/o Shri Amarsingh w.e.f. 4-3-99 is legal and justified? If not, to what relief the workman is entitled to?”

2. After receiving reference, notices were issued to the parties. Workman submitted statement of claim at Page 5/1 to 5/4. Case of workman is that he was appointed in 1986 in Gram Salatward as labour. He was doing work of repairing of local faults under SDE Telecom- IInd party No.4,5. Several daily wage labours were engaged by the IInd party as per judgment reported in AIR-1987-SC-2342. Directions were given for scheme for regularization of daily wage labour. Workman submits that he was continuously working from 1986 till termination of his services 1999. He completed 240 days continuous service during each of the year. His services were orally terminated. Notice under Section 25-F was not given to him, retrenchment compensation was not paid to him. On such grounds, he prays for reinstatement with back wages.

3. IInd party filed Written Statement on 22-3-2013 denying claim of workman. It is denied that workman was engaged as casual labour from 1986. There was no question of framing policy for regularisation of the workman engaged on daily wages. That ID Act doesnot apply to IInd party. There was no violation of Section 25-F of I.D.Act. workman not completed 240 days continuous service. That workman never worked with Sub Divisional Engineer. Workman is not entitled to any relief.

4. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the action of the management of Chief General Manager, Telecom in terminating the services of Shri Alemsingh S/o Shri Amarsingh w.e.f. 4-3-99 is legal and justified? In Negative

(ii) If not, what relief the workman is entitled to?”

As per final order.

### REASONS

5. Workman is challenging termination of his service for violation of Section 25-F of I.D.Act. That he was working as labour from 1996 till March 1999. His services were terminated without notice. Above contentions of workman are denied by IInd party. Workman filed affidavit of his evidence supporting above contentions.

However he says that his services were terminated in 1999 without notice. He was working from March 88 to 99. In his cross-examination, workman says that he had worked from 1986 to 1990. The contents of his affidavit that he worked from 1988 to 1992 is correct. That he had wrongly stated that he worked from 1986. He filed affidavit in Hindi and not in English. Again he says that the affidavit is drafted by his counsel.

6. Management’s witness Shri Diwkar Jain in his affidavit says that workman was never engaged at Shajapur. Claim of workman for regularization is baseless. Management’s witness in his cross-examination says affidavit of evidence is prepared as per the documents available in the office of SDE. Those documents are not produced. He claims ignorance whether workman was working at Shajapur. That in the year 2008, first time he had seen the record relating to the workman. The evidence of management’s witness is not supported by documents. Therefore his evidence cannot be accepted. Workman filed affidavit of his evidence and he was cross-examined. Documents Exhibit W-1, W-2 are proved from his evidence. In his cross-examination, workman says he had not submitted application for those documents. He claims ignorance about any scheme for regularization. Document Exhibit W-1, shows workman was continuously working for more than 240 days from August to December 88 and thereafter till April 1995. Exhibit W-2 shows intimation given to workman. Evidence of workman is supported by documents of completed 240 days continuous service. He was not paid retrenchment compensation, he was not served with notice therefore I record my finding in Point No.1 in Negative.

7. Point No.2- in view of my finding in Point No.1 termination of workman is found illegal for violation of Section 25-F of I.D.Act, workman was engaged on daily wages, he is not entitled for regularization. Considering the working period of workman from 88 to 95, compensation Rs. 75,000 would be reasonable. Accordingly I record my finding in Point No.2.

8. In the result, award is passed as under:-

- (1) The action of the management of Chief General Manager, Telecom in terminating the services of Shri Alemsingh S/o Shri Amarsingh w.e.f. 4-3-99 is illegal.
- (2) IInd party is directed to pay compensation Rs. 75,000/- to the workman.

Amount as per above order shall be paid to workman within 30 days from the date of notification of award. In case of default, amount shall carry 9 % interest per annum from the date of award till its realization.

R. B. PATLE, Presiding Officer

नई दिल्ली, 24 सितम्बर, 2014

**का.आ. 2636.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बी. सी. सी. एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ सं. 118/1992) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24.09.2014 को प्राप्त हुआ था।

[सं. एल-20012/349/1991-आईआर (सी-1)]

एम. के सिंह, अनुभाग अधिकारी

New Delhi, the 24th September, 2014

**S.O. 2636.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 118/1992) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 1, Dhanbad as shown in the Annexure, in the Industrial Dispute between the management of BCCL, and their workmen, received by the Central Government on 24.09.2014.

[No. L-20012/349/1991-IR (C-I)]

M. K. SINGH, Section Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1, DHANBAD

**Reference: No. 118/92**

In the matter of reference U/S 10 (1) (d) (2A) of  
I.D.Act. 1947.

Employer in relation to the management of Nichitpur  
Colliery M/S BCCL

AND

Their workmen

**Present:** Sri R. K. Saran, Presiding Officer.

#### Appearances:

For the Employers : None

For the workman. : None

State : Jharkhand Industry : Coal

Dated : 9th September, 2014

#### AWARD

By order No. L-20012/349/1991/IR (C-1)) dated 25/09/92, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 referred the following dispute for adjudication to this Tribunal:

#### SCHEDULE

“Whether the demand of Bihar Colliery Kamgar Union Union (CITU) for payment of wages for the idle period in respect of Shri Swami Nath Ahir, Miner/Loader, Nichitpur Colliery is Justified? If so, to what relief the workmen is entitled?”

2. After receipt of the reference, both parties are noticed. But appearing for certain dates none appears subsequently. Case remain pending. It is felt that the disputes between the parties have been resolved in the meantime. Hence No Dispute Award is passed. Communicate.

R. K. SARAN, Presiding Officer

नई दिल्ली, 24 सितम्बर, 2014

**का.आ. 2637.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स बी. सी. सी. एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ सं. 117/1999) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24.09.2014 को प्राप्त हुआ था।

[सं. एल-12012/66/1999-आईआर (सी-1)]

एम. के सिंह, अनुभाग अधिकारी

New Delhi, the 24th September, 2014

**S.O. 2637.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 117/1999) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 1, Dhanbad as shown in the Annexure, in the Industrial Dispute between the management of M/s. BCCL, and their workmen, received by the Central Government on 24.09.2014.

[No. L-12012/66/1999-IR (C-I)]

M. K. SINGH, Section Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1, DHANBAD.

In the matter of reference U/S 10 (1) (d) (2A) of  
I.D.Act. 1947

**Ref. No. 117 of 1999**

Employer in relation to the management of Block II  
Area M/S BCCL

AND

Their workmen

**Present:** Sri Ranjan Kumar Saran, Presiding Officer



**Appearances :**

For the Employers : Sri D.K.Verma, Advocate

For the workman : Sri R. Ranjan, Advocate

State : Jharkhand : Industry :- Coal

Dated 4th September, 2014

**AWARD**

By Order No.L-20012/66/1999-IR (C-I), dated. 14/06/1999, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal:

**SCHEDULE**

“Whether the action of the management of BCCL is diverting Shree Dukhi Nonia and 25 other workmen (list enclosed) from piece rate to time rate consequent upon introducing mechanical process in loading causing reduction in their wages is proper, legal and justified? If not, to what relief those workman are entitled? ”

**Annexure**

- |                         |                       |
|-------------------------|-----------------------|
| 1. Dukhi Nonia          | 2. Fulwa Kamin        |
| 3. Annchi Kamin         | 4. Lachmania Kamin    |
| 5. Ch. Sarsawatia Kamin | 6. Dularia Kamin      |
| 7. Kashi Rawani         | 8. Bhekheni Mohalia   |
| 9. Ful Bai              | 10. Swang Bai         |
| 11. Kismatia Kamin      | 12. Sudheswar Nonia   |
| 13. Tulsi Nonia         | 14. Mungia Kamin      |
| 15. Rusmi Kamin         | 16. Jag Narayan Nonia |
| 17. Shanti Kamin        | 18. Jitni Kamin       |
| 19. Barti Kamin         | 20. Anarkalia Kamin   |
| 21. Kokil Devi          | 22. Sukarmani Kamin   |
| 23. Dularia Kamin       | 24. Girja Devi        |
| 25. Renuka Devi         | 26. Tilwa Kamin       |

2. This Case is received from the Ministry of Labour & Employment on 15.06.2003. After receipt of reference, both parties are noticed. The workman files their written statement on 04.09.2001.

The management files their written statement on 19.12.2001. Thereafter rejoinder and document filed by the parties. One witness have been examined on behalf of the workman, and two witnesses has been examined on behalf of the management. Document marked as exhibits from both side.

3. The short point to be decided by this Tribunal is that whether the workman who were piece rated workmen, subsequently converted to time rated workmen are entitled to protection of pay or not.

4. The management submitted in his argument that there is no dissimilarity in the pay of the workmen and that it is duly protected. It is also argued by the management that, let the workman prove that there is dissimilarity, so that the management would protect the pay.

5. This sorts of argument advanced by the management (Argument note on record) is not acceptable. Because previous pay roll of the workman and the pay roll, on the date of conversion from piece rate to time rate is with the management.

6. Considering the facts and circumstances of this case, I hold that the action of the management of BCCL is diverting Sh. Dukhi Nonia and 25 other workmen from piece rate to time rate consequent upon introducing mechanical process in loading causing reduction in their wages is not proper and justified. Hence the management is hereby directed to protect the pay of the workmen giving them their appropriate category and subsequent arrear dues, If there is any dissimilarity.

This is my award

R. K. SARAN, Presiding Officer

नई दिल्ली, 24 सितम्बर, 2014

**का.आ. 2638.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बी. सी. सी. एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ सं. 82/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24.09.2014 को प्राप्त हुआ था।

[सं. एल-20012/463/1996-आईआर (सी-1)]

एम. के सिंह, अनुभाग अधिकारी

New Delhi, the 24th September, 2014

**S.O. 2638.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 82/2001) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 1, Dhanbad as shown in the Annexure, in the Industrial Dispute between the management of BCCL, and their workmen, received by the Central Government on 24.09.2014.

[No. L-20012/463/1996-IR (C-I)]

M. K. SINGH, Section Officer

**ANNEXURE****BEFORE THE CENTRAL GOVERNMENT  
INDUSTRIAL TRIBUNAL NO.1, DHANBAD**

In the matter of reference U/S 10(1) (d) (2A) of  
I.D.Act.1947

Ref.No. 82of 2001

Employer in relation to the management of Katras Area ,  
M/S BCCL

AND

Their workmen

**Appearances :**

For the employers : None

For the Workman : Sri N.G. Arun, Rep.

State :- Jharkhand Industry : Coal

Dated : 10th September, 2014

**AWARD**

By order No. L-12012/463/96/IR (C-I) dt. 28-03-2001 the Central Government in the Ministry of Labour has, in exercise of powers conferred by clause (d) of sub-section(1) and sub section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal:

**SCHEDULE**

“क्या राष्ट्रीय कोलियरी मजदूर संघ की मांग कि भा. को. को. लिमि. , कतरास क्षेत्र -4 के प्रबंधांतर् द्वारा श्री दिलीप कुमार एवं सूची में दिए गए 13 अन्य कर्मकारों ,जनरल मजदूर, ट्रेसर एवं स्वीपर, को जिन्हे वर्ज 1985 से काम से हटाया गया, सेवा में पुरः स्थापित किया जाए तथा भा. को. को. लिमि. में नियमित किया जाए उचित एवं न्यायसंगत है ? यदि हां तो उक्त कर्मकार किस राहत के पात्र हैं तथा किस तारीख ?”

Annexure

List of Workman

S. No.	Name	Designation
1	2	3
1	Dilip Kumar Gope	Dresser
2	Dilip Kumar Rajak	Dresser
3	Ashok Kumar Singh	Sweeper
4	Surti Devi	Sweepress
5	Obir Hari	Sweeper
6	Prem Dome	Sweeper
7	Bimla Devi	Sweepress

1	2	3
8	Ms. Bilasi Barala	Sweepress
9	Bipin Kumar Singh	General Mazdoor
10	Lakhan Rajak	General Mazdoor
11	Bishu Dey	General Mazdoor
12	Ms. Alpana	Sweepress
13	Smt. Sailo Bourin	Sweepress
14	Uma Kanta Tiwari	General Mazdoor

2. This Case is received from the Ministry on 03.04.2001. During the pendency of the case concerned, The sponsoring Union representative submits that workman is not interested to contest the case. It is felt that the dispute between parties is resolved. Hence “No dispute” award is passed. communicate.

R. K. SARAN, Presiding Officer

नई दिल्ली, 24 सितम्बर, 2014

**का.आ. 2639.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स बी. सी. सी. एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ सं. 87/1992) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24.09.2014 को प्राप्त हुआ था।

[सं. एल-20012/344/1991-आईआर (सी-1)]

एम. के सिंह, अनुभाग अधिकारी

New Delhi, the 24th September, 2014

**S.O. 2639.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 87/1992) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 1, Dhanbad as shown in the Annexure, in the Industrial Dispute between the management of M/s. BCCL, and their workmen, received by the Central Government on 24.09.2014.

[No. L-20012/344/1991-IR (C-I)]

M. K. SINGH, Section Officer

**ANNEXURE****BEFORE THE CENTRAL GOVERNMENT  
INDUSTRIAL TRIBUNAL NO.1,  
DHANBAD**

Reference: No. 87/1992

In the matter of reference U/S 10 (1) (d) (2A) of  
I.D.Act. 1947.

Employer in relation to the management of Loyabad  
Colliery M/S BCCL

## AND

Their workmen

**Present:** Sri R.K.Saran, Presiding Officer**Appearances:**

For the Employers : None  
 For the workman. : None  
 State : Jharkhand. : Industry- Coal

Dated : 8th September 2014

**AWARD**

By order No. L-20012/344/ 91 /IR (C-1)) dated 27/08/92, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 referred the following dispute for adjudication to this Tribunal:

**SCHEDULE**

“Whether the action of the management of Loyabad Colliery in superannuating Shri Lekho Mahto, Onsetter w.e.f. 29<sup>th</sup> December, 1990 is justified? If not, to what relief the workman is entitled ?”.

2. After receipt of the reference , both parties are noticed. But appearing for certain dates none appears subsequently. Case remain pending. It is felt that the disputes between the parties have been resolved in the meantime. Hence No Dispute Award is passed Communicate.

R. K. SARAN, Presiding Officer

नई दिल्ली, 24 सितम्बर, 2014

**का.आ. 2640.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मै. सी. सी. एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ सं. 117/1992) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24.09.2014 को प्राप्त हुआ था।

[ सं. एल-20012/32/1992-आईआर (सी-1) ]

एम. के सिंह, अनुभाग अधिकारी

New Delhi, the 24th September, 2014

**S.O. 2640.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 117/1992) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 1, Dhanbad as shown in the Annexure, in the Industrial Dispute between the management of M/s. CCL, and their workmen, received by the Central Government on 24.09.2014.

[No. L-20012/32/1992-IR (C-I)]

M. K. SINGH, Section Officer

## ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT  
 INDUSTRIAL TRIBUNAL NO. 1,  
 DHANBAD**

Reference: No. 117/1992

In the matter of reference U/s 10 (1) (d) (2A) of  
 I.D.Act. 1947.

Employer in relation to the management of Bhurkunda  
 Colliery M/S BCCL

## AND

Their workmen.

**Present:** Sri R. K. Saran, Presiding Officer.**Appearances:**

For the Employers : None  
 For the workman. : None  
 State : Jharkhand. : Industry- Coal

Dated : 5th September, 2014

**AWARD**

By order No. L-20012/32/ 1992 /IR (C-1)) dated 25/09/1992, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub -section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 referred the following dispute for adjudication to this Tribunal:

**SCHEDULE**

“Whether the denial to provide employment to Shri Mahesh Kumar son of Smt. Piaso Kamin Devi, Ex-Wagon Loader of Bhurkunda Colliery by the management of Bhurkunda Colliery is justified? If not, to what relief is she entitled?”

2. After receipt of the reference, both parties are noticed. But appearing for certain dates none appears subsequently. Case remain pending. It is felt that the disputes between the parties have been resolved in the meantime. Hence No Dispute Award is passed. Communicate.

R. K. SARAN, Presiding Officer

नई दिल्ली, 24 सितम्बर, 2014

**का.आ. 2641.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बी. सी. सी. एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ सं. 16/2010) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24.09.2014 को प्राप्त हुआ था।

[ सं. एल-20012/40/2009-आईआर (सी-1) ]

एम. के सिंह, अनुभाग अधिकारी

New Delhi, the 24th September, 2014

**S.O. 2641.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 16/2010) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 1, Dhanbad as shown in the Annexure, in the Industrial Dispute between the management of M/s. BCCL, and their workmen, received by the Central Government on 24.09.2014.

[No. L-20012/40/2009-IR (C-I)]

M. K. SINGH, Section Officer

# **ANNEXURE**

## **BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO.1), DHANBAD.**

In the Matter of a Reference U/s 10(1) (D) (2A) of  
I.D. Act, 1947.

Ref. No. 16 of 2010

Employers in relation to the management of Koyla  
Bhawan M/s. BCCL

AND

Their workmen.

**Present :** Sri Ranjan Kumar Saran, Presiding officer

### **Appearances:**

For the Employers. : Sri D.K.Verma, Advocate

For the workman. : Sri S.C.Gour. Rep.

State :- Jharkhand. : Industry : Coal

Dated 10th September, 2014

### **AWARD**

By Order No.L-20012/40/2009-IR (C-I), dated 05/02/2010, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub –section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal:

“Whether the action of the management of Koyla Bhawan of M/s. BCCL in not providing dependent employment to Ms. Subhalaxmi Devi W/o Late Ram Murti Maharaj, is justified and legal? (ii) To what relief is the widow of the concerned deceased employee entitled?”

2. The case is received from the Ministry of Labour on 25.02.2010. The Sponsoring Union files their written statement on 24.05.2010. The management files their written statement-cum-rejoinder on 11.04.2012. One witness each examined from both side. The workman's document marked as W-1 to W-5.

3. The workman submits that she is wife of the deceased workman. The concerned workman was the awardee of Ref. No. 150/93 of CGIT No.2., which award is confirmed by Hon'ble High Court. And the management provide service to all awardees of that case, baring the applicant.

4. The Management paid all awardees of this case under section 17-B, and the concerned workman had also received the wages of 17-B till his death i.e on 12/9/2002.

5. Smt. Subhalaxmi Devi W/o the concerned workman, She complains though, she claimed for job, her claim was rejected. After reference, the management bluntly denied the claim of taking her in job,

6. The management witness (MW-1) submitted in his evidence i.e cross examination as follows.: -

“ Ref. 150/93 was implemented by us as per the High Court's direction. The workman was getting 17-B benefits till 2002 i.e. his date of death. The applicant applied for compensatory appointment after her husband's death . As she did not come to us for job. She was denied job. It is not a fact that she is insisting for job and that we have intentionally did not provide the same.”

7. From the above statement of MW-1, as the applicant did ask for job she was not given the same. The MW-1 has also not doubted her identity that she is not the widow of the deceased workman. Therefore if the application for job of the applicant is pending, which is to be accepted.

8. Considering the facts and circumstances of this case, I hold that the action of the management of Koyla Bhawan of M/s. BCCL in not providing dependent employment to Ms. Subhalaxmi Devi W/o Late Ram Murti Maharaj, is not justified. Hence she be given job soon after the award notified in the Gazette, waiving formalities.

This is my award

R. K. SARAN, Presiding Officer

नई दिल्ली, 24 सितम्बर, 2014

**का.आ. 2642.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बी. सी. सी. एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ सं. 95/1992) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24.09.2014 को प्राप्त हुआ था।

[सं. एल-20012/387/1991-आईआर (सी-1)]

एम. के सिंह, अनुभाग अधिकारी

New Delhi, the 24th September, 2014

**S.O. 2642.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central



Government hereby publishes the Award (Ref. No. 95/1992) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 1, Dhanbad as shown in the Annexure, in the Industrial Dispute between the management of M/s. BCCL, and their workmen, received by the Central Government on 24.09.2014.

[No. L-20012/387/1991-IR (C-I)]

M. K. SINGH, Section Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1, DHANBAD

Reference: No. 95/92

In the matter of reference U/S 10 (1) (d) (2A) of  
I.D.Act. 1947.

Employer in relation to the management of Amlabad  
Colliery M/S BCCL

AND

Their workmen.

**Present:** Sri R.K.Saran, Presiding Officer.

#### Appearances:

For the Employers : None

For the workman. : None

State : Jharkhand. : Industry- Coal

Dated : 8th September, 2014

#### AWARD

By order No. L-20012/387/1991-IR (C-1) dated 31/08/92, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act, 1947 referred the following dispute for adjudication to this Tribunal:

#### SCHEDULE

“Whether the action of the management of Amlabad Colliery of M/s Bharat Coking Coal Ltd. P.O. Amlabad, Dt. Dhanbad, dismissing Shri Dudhanath Kahar from service vide their letter no. BCCL: 86: AMBD PS dated 28/05/86 is justified? If not, to what relief the workman is entitled?”

2. After receipt of the reference, both parties are noticed. But appearing for certain dates none appears subsequently. Case remain pending. It is felt that the disputes between the parties have been resolved in the meantime. Hence No Dispute Award is passed. Communicate.

R. K. SARAN, Presiding Officer

नई दिल्ली, 24 सितम्बर, 2014

**का.आ. 2643.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार लक्ष्मी मिल्स, थ्रिस्सूर के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, एर्णाकुलम, के पंचाट (संदर्भ सं. 8/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 12.09.2014 को प्राप्त हुआ था।

[सं. एल-42011/83/2012-आईआर (डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 24th September, 2014

**S.O. 2643.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 8/2013) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Ernakulam now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of the Lakshmi Mills, Thrissur (Kerala), and their workman, which was received by the Central Government on 12.09.2014.

[No. L-42011/83/2012-IR (DU)]

P. K. VENUGOPAL, Section Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ERNAKULAM

**Present:** Shri. D. Sreevallabhan, B.Sc., LL.B, Presiding Officer

(Thursday the 28<sup>th</sup> day of August, 2014/6<sup>th</sup> Bhadrapada, 1936)

ID 8/2013

Workman : Shri P Nandanani Palliyil House  
Sitaram Quarters  
P Pullazhi Thrissur (Kerala) -12  
By M/s.Kumar & Kumar

Management : The General Manager Lakshmi  
Mills Pullazhi Thrissur (Kerala) -  
680012  
By Advs. Shri P Ramakrishnan &  
Shri C Anilkumar

This case coming up for final hearing on 28.08.2014 and this Tribunal-cum-Labour Court on the same day passed the following:

#### AWARD

In exercise of the powers conferred by clause (d) of sub-section(1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Government of India/Ministry of Labour vide its Order

No. L-42011/83/2012-IR(DU) dated 17.12.2012 has referred the industrial dispute scheduled thereunder for adjudication to this tribunal.

2. The dispute is:

“Whether the action of the management of M/s Kerala Lakshmi Mills, Thrissur in terminating the services of Shri Nandan P on the ground of chronic absenteeism w.e.f. 04.06.2008 is justified or not? If not, what relief he is entitled to?”

3. Workman was appointed under the management as a Spinning sider in their spinning department in the year 1984. His service was terminated w.e.f.04.06.2008 for the reason of chronic absenteeism. Challenge is made by the workman about it by raising this industrial dispute.

4. After submission of pleadings by both parties the case was posted in the Lok Adalath as agreed to by them. There was a full and final settlement of the dispute and a compromise was filed jointly by both the parties. There is nothing illegal in accepting the compromise. Hence the compromise is accepted and an award is passed in terms of the compromise. The compromise will form part of the award.

The award will come into force one month after its publication in the Official Gazette.

Dictated to the Personal Assistant, transcribed and typed by her, corrected and passed by me on this the 28<sup>th</sup> day of August, 2014.

D. SREEVALLABHAN, Presiding Officer

#### Appendix

-Nil-

#### IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ERNAKULAM

ID No. 8/2013

Nandan, P, Palliyil House,  
Sitharam Quarters, P. Pullazhi  
Thrissur (Kerala)—12

...Workman

Vs.

The General Manager,  
Lakshmi Mills Pullazhi,  
Thrissur (Kerala) 680012

...Management

The issue referred for adjudication in the above industrial dispute is "Whether the action of the management of M/s. Kerala Lakshmi Mills, Thrissur in terminating the services of Shri Nandan P on the ground of chronic absenteeism w.e.f. 4/6/2008 is justified or not? If not, what relief he is entitled to?

The matter was taken up in Lak Adalat and the parties agreed to settle the dispute on the following terms:—

1. The management agrees to pay a sum of Rs. 58,754 (Rupees fifty eight thousand seven hundred and fifty four only) towards gratuity after deducting an amount of Rs. 13,972.75 due from the workman, The workman agrees to accept Rs. 58,754/- in full and final settlement of all his claims against the management.

2. Upon receiving the said amount, the workman will not have any further monetary claim or claim for employment against the management.

3. The amount (Rs. 58,754/-) mentioned in clause 1 will be given to the workman by the management on or after 10.9.2014 on reporting at the office of the management during working hours.

Dated this the 28th day of August, 2014

Workman Sd/-

Management : Sd/-

Counsel for Workman : Sd/-

Counsel for  
Management : Sd/-

Sd/-

Mediator

नई दिल्ली, 25 सितम्बर, 2014

**का.आ. 2644.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार डब्ल्यू. सी. एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर, के पंचाट (संदर्भ सं. 109/2008) को प्रकाशित करती है, जो केन्द्रीय सरकार को 25.09.2014 को प्राप्त हुआ था।

[सं. एल-22015/30/2008-आईआर (सीएम-2)]

बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 25th September, 2014

**S.O. 2644.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 109/2008) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur now as shown in the Annexure, in the Industrial Dispute between the management of the WCL, and their workmen, received by the Central Government on 25.09.2014.

[No. L-22015/30/2008-IR (CM-II)]

B. M. PATNAIK, Desk Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/109/08

PRESIDING OFFICER: SHRI R. B. PATLE

Shri Mohd. Naseem Siddiqui,  
Zonal Secretary, C.Meva,  
Zonal Vekoli Shakha,  
Ward No.10, Gudhi,  
Post Palachaurai,  
Chhindwara

...Workman

### Versus

Chief General Manager,  
Western Coalfields Limited,  
Kanhana Area, PO Dungaria,  
Chhindwara

...Management

### AWARD

Passed on this 11<sup>th</sup> day of September, 2014

1. As per letter dated 28-11-2008 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section 10 of I.D. Act, 1947 as per Notification No. L-22015/30/2008-IR(CM-II). The dispute under reference relates to:

“ Whether the action of the management of M/s. WCL in terminating the services of Shri Raju S/o Shri Gorkha w.e.f. 15-12-97 is legal and justified? To what relief is the claimant workman entitled?”

2. After receiving reference, notices were issued to the parties. Despite of repeated notices issued, workman failed to file statement of claim. Vide order dated 29-6-2011, Ist party was proceeded exparte.

3. IInd party management submitted exparte Written Statement. The contentions raised in Written Statement by IInd party are that the workman was employed as General Mazdoor. He was habitual absentee. He was remaining absent without intimation or sanctioned leave. He was given opportunity to improve his conduct. The contentions of workman was 37 days in 1993, 77 days in 1994, 90 days in 1995 and 23 days in 1996, chargesheet was issued to workman. Reply given by workman to chargesheet was not found satisfactory. Shri K.V. Lawadhe was appointed as Enquiry Officer. Workman despite of repeated notices failed to participate in the Enquiry Proceedings. Enquiry was proceeded in his absence. The evidence of management's witnesses was recorded in Enquiry proceedings. He further submitted that if enquiry is found illegal for any reasons, management be permitted to prove misconduct adducing evidence. Workman failed to submit his statement of claim, not participated in reference proceeding even after repeated notices. He considers the reference proceeding as luxury proceeding. On such grounds, IInd party prays that reference be answered in its favour.

4. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

- (i) Whether the action of the management of M/s. WCL

in terminating the services  
of Shri Raju S/o Shri Gorkha  
w.e.f. 15-12-97 is legal  
and justified?

In Affirmative

- (ii) If not, what relief the Workman is not  
workman is entitled to?” entitled to any relief.

### REASONS

5. Workman has not participated in reference proceeding. He is proceeded exparte. Management has filed exparte Written Statement. Affidavit of management's witness Santosh Kumar Dubey is filed. Management's witness has supported contentions of IInd party in the Written Statement. Workman was habitual absentee. Enquiry was conducted against workman. Workman had failed to participate. The details of Enquiry Proceedings are stated by the witness. Evidence of management's witness remained unchallenged. Management's Representative in his statement before Enquiry Officer has given details of the working days of Ist party workman. His evidence remained unchallenged. Workman has not participated in Enquiry Proceedings as well as in the reference proceeding. I do not find reason to disbelieve unchallenged evidence of management's witness. For above reasons, I record my finding in Point No.1 in Affirmative.

6. In the result, award is passed as under:-

- (1) The action of the management of M/s. WCL in terminating the services of Shri Raju S/o Shri Gorkha w.e.f. 15-12-97 is proper and legal.  
(2) Workman is not entitled to any relief.

R. B. PATLE, Presiding Officer

नई दिल्ली, 25 सितम्बर, 2014

**का.आ. 2645.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एस. ई. सी. एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ सं. 108/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 25.09.2014 को प्राप्त हुआ था।

[सं. एल-22015/19/2005-आईआर (सी-II)]

बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 25th September, 2014

**S.O. 2645.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 108/2005) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur now as shown in the Annexure, in the Industrial Dispute between the management of the SECL, and their workmen, received by the Central Government on 25.09.2014.

[No. L-22015/19/2005-IR (C-II)]

B. M. PATNAIK, Desk Officer

**ANNEXURE**  
**BEFORE THE CENTRAL GOVERNMENT**  
**INDUSTRIAL TRIBUNAL-CUM-LABOUR**  
**COURT, JABALPUR**

**NO. CGIT/LC/R/108/05**

**PRESIDING OFFICER: SHRI R.B. PATLE**

Shri Daras Ram,  
 Vill Sundernagri,  
 PO Kotma Colliery,  
 Distt. Shahdol (MP)

...Workman

Versus

Sub Area Manager,  
 Govinda Sub Area of SECL,  
 PO Kotma Colliery,  
 Distt. Shahdol (MP)

...Management

**AWARD**

Passed on this 4<sup>th</sup> day of September 2014

1. As per letter dated 26-9-05 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section 10 of I.D.Act, 1947 as per Notification No.L-22015/19/2005-IR(C-II). The dispute under reference relates to:

“Whether the action of the General Manager, Kotma Area of SECL and Sub Area Manager, Govind Sub Area of SECL, PO Kotma Colliery, Distt. Shahdol (Annapur) in not providing surface duty to Shri Daras Ram, workman at Store or elsewhere from 17-12-90 amounts to illegal retrenchment/ termination? If yes, to what relief the workman is entitled for and from which date?”

2. After receiving reference, notices were issued to the parties. Workman submitted statement of claim at Page 6/1 to 6/2. Case of workman is that he was in employment of IInd party from 1963. After initial working as miner, his category was changed to General Mazdoor. On 17-9-88, he had suffered accidental injuries. At the relevant time, he was working as miner. After he suffered injury, he was provided light work of Category- I accordingly wages were paid to him. He further submits that from post of miner, he was changed to General Mazdoor. Secondly he was getting less wages Rs. 2000 per month. Workman had submitted the representations requesting for payment of full wages. From 17-12-90, workman was stopped from working. He was not paid compensation for injuries suffered by him. He raised dispute before ALC. Management was directed to allow workman on duty within 10 days. It is alleged that management did not allow him on work. He was served with chargesheet on 18-9-06. Workman submitted reply

to the chargesheet. It is further submitted that workman was illegally terminated from service without charges proved against him. Enquiry was not properly conducted. Workman further submits that preventing him from duties is illegal. On such ground, workman prays for recovery of wages for the period 17-12-90 to 17-11-96, benefit of full wages, LTC, Gratuity fixation of pension. The relief claimed by workman in his statement of claim are beyond the terms of reference.

3. IInd party filed Written Statement at Page 7/1 to 7/8. Claim of workman is denied outright. The terms of reference doesnot cover surface duty which workman was claiming. The reference relates to illegal retrenchment of workman. Claim of workman is contrary to the terms of reference. Illegality of reference is challenged by management. IInd party further submits on 17-9-88, workman suffered with an accident. Minor injury was suffered by workman in his leg. Workman was provided medical treatment. He was paid for injuries on duty time to time. His sick certificate was issued. Workman was examined by Medical Board for assessment of his permanent/ partial disablement. Workman was found zero disability/ fit for duty. Workman was temporarily provided light duty from 30-1-90 to 12-2-90. Workman was requesting surface duty from 23-10-89 to 21-11-89. It is emphasized that after workman was found fit, despite of repeated directions workman did not attend his original duties. Workman remained absent therefore chargesheet was issued to workman on 20-12-92. Said chargesheet was sent by RPAD at his house. As workman refused to receive chargesheet, it was published in daily newspaper. Workman was requested to participate in enquiry proceedings. Despite of enquiry conducted against workman, he had not participated. Any action/ punishment was not imposed against him. That again chargesheet was issued to workman on 19-8-94. Vide letter dated 30-12-94, workman was advised to attend office of Colliery Manager. Workman did not comply said direction. Workman did not attend duty. He remained unauthorized absent. However any punishment was not imposed against him. Workman raised dispute. Govt. had refused to make reference. Only as per direction of Hon'ble High Court in W.P. No. 3596/95, the dispute is referred.

4. The age of superannuation in coal industry is 60 years,. Workman was issued notice on 25-5-98 for his retirement on attaining superannuation. Despite of chargesheet issues to him, any punishment is not imposed on workman. Though workman was found fit for duty, he unauthorisely remained absent. The charge of category doesnot amount to retrenchment. When workman was provided light duties. Wages of said were paid to him. On all such contentions IInd party prays for rejection of claim.

5. Considering pleadings on record, the points which arise for my consideration and determination are as under.



My findings are recorded against each of them for the reasons as below:-

- |  |  |
|--|--|
| (i) Whether the action of the General Manager, Kotma Area of SECL and Sub Area Manager, Govind Sub Area of SECL PO Kotma colliery, Distt. Shahdol (Annupur) in not providing surface duty to Shri Daras ram, workman at Store or elsewhere from 17-12-90 amounts to illegal retrenchment/ termination? | In Negative                            |
| (ii) If not, what relief the workman is entitled to?"  | Workman is not entitled to any relief. |

### REASONS

6. As per terms of reference, question is Whether the action of the IInd party management in not providing surface duty to Shri Daras Ram, workman at Store or elsewhere from 17-12-90 amounts to illegal retrenchment/ termination? Retrenchment is defined under Section 2(o) of I.D. Act as retrenchment means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include- (a) voluntary retirement of the workman, or (b) retirement of the workman on reaching age of superannuation, (bb) termination as a result of the non-renewal of the contract of employment between the employer and the workman, termination of workman on ground of continued illness.

7. Statement of Claim of workman is silent what punishment is imposed against him by IInd party on the chargesheet issued to him. Workman has pleaded that he was denied light duty, preventing from attending duties. In his affidavit of evidence, workman says from 17-12-90, he was completely denied to work, his services were illegally discontinued from 30-9-98. In his cross-examination, workman says that he was working on post of miner. He suffered injury on 17-9-88. He was provided treatment in SECL hospital. He was paid wages during the period of treatment. He was examined by Medical Board and found fit with zero disability. He had requested for light duty during the period 23-10-89 to 22-11-89 and 13-1-90 to 12-2-90. He was provided light work during said period. Thereafter management refused to provide light work to him. That he will have to do his original work. He did not agree to do his original work. In his further cross-examination, workman says chargesheet was not issued to him for his unauthorized absence from duty from 20-12-92. That in Form B

register, his permanent address was not recorded. He is residing at place of his residence. He has not received chargesheet by RPAD. Postman had no enmity with him. He did not receive any chargesheet on 19-8-94. He had not received letter for joining duty w.e.f. 30-12-94. He received letter for his retirement. He has retired from service as per letter. He is receiving pension.

8. Evidence of management's witness Shri P. Mohanty has stated that workman had suffered injury, he was provided light work. After examination by Medical Board, workman was found fit. Workman was directed to join his original work. He remained absent. Chargesheets were issued to workman. Any action was not taken against workman as per those chargesheet. In his cross-examination, management's witness says he was not working at relevant time when workman was working at SECL Mine. The witness of the management admits Ist chargesheet issued to workman, charges were not proved. He corrected that any action was not taken as per the chargesheet. In his further cross-examination, he says that in first chargesheet issued to workman, some charges were deleted and again chargesheet was issued to him. He was unable to tell whether the workman is illiterate. Management's witness denies that action was taken against him to harm workman. After workman was found fit by Medical Board, he could not be provided light work. Workman was provided light work for temporary period.

9. Though pleadings and evidence on record shows that chargesheets were issued to workman, workman has pleaded that enquiry was not properly conducted. The terms of reference are silent about illegality of any kind of punishment imposed against workman in pursuance of such charge therefore the pleadings and evidence on the point is beyond the terms of reference and needs no detailed discussion. IInd party has challenged legality of reference in its Written statement but the order of reference was not challenged before appropriate Court therefore this Tribunal is bound to decide the reference. The contentions raised by management about legality of reference order cannot be considered.

10. Documents produced on record is Exhibit W-1 notice by ALC, W-2 is order of ALC submitting failure report, W-3,4 are notices of enquiry, W-5 shows that workman was declared medically fit to resume his original duty by Medical Board, in meeting dated 11-4-90, workman on his own was not attending duties assigned to him. Exhibit W-6 is application dated 9-12-92 of workman requesting to allow him on duty. W-7 is letter given to workman that he was never prevented from attending duty, he himself was not attending duties. All those documents supports the contentions of IInd party.

Exhibit W-8 is notice of enquiry given to workman, W-9 is notice of retirement of workman from 30-9-98. Workman in his cross-examination has admitted his retirement as per notice, he received pension. Thus there is no evidence on record about termination of workman for any reasons which may amount to retrenchment provided under Section 2(oo) of I.D.Act. Therefore I record my finding on Point No.1 in Negative.

11. In the result, award is passed as under:-

(1) The action of the IInd party management in not providing surface duty to Shri Daras Ram, workman at Store or elsewhere from 17-12-90 is legal.

(2) Ist party workman is not entitled to any relief as claimed by workman.

R. B. PATLE, Presiding Officer

नई दिल्ली, 25 सितम्बर, 2014

**का.आ. 2646.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार डब्ल्यू. सी. एल., के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नागपुर, के पंचाट (संदर्भ सं. 150/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 25.09.2014 को प्राप्त हुआ था।

[सं. एल-22012/227/2002-आईआर (सीएम-II)]

बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 25th September, 2014

**S.O. 2646.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 150/2003) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the Industrial Dispute between the management of the Hindustan Lalpeth U/G Sub Area of WCL, and their workmen, received by the Central Government on 25.09.2014.

[No. L-22012/227/2002-IR (CM-II)]

B. M. PATNAIK, Desk Officer

#### ANNEXURE

**BEFORE SHRI J.P.CHAND, PRESIDING OFFICER,**

**CGIT-CUM-LABOUR COURT, NAGPUR**

**Case No. CGIT/NGP/150/2003**

Date: 12.09.2014

Party No.1 : The Sub Area Manager,  
Hindustan Lalpeth U/G Sub Area,  
Western Coalfields Ltd.

PO & Tah: Ballarpur,  
Dist. Chandrapur(MS)

Party No.2 : Shri Lomesh Khartad,  
General Secretary Rashtriya Colliery  
Mazdoor Congress,  
Dr. Ambedkar Nagar, Ballarpur,  
PO & Tah: Ballarpur,  
Dist. Chandrapur(M.S.)

#### AWARD

(Dated: 12<sup>th</sup> September, 2014)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Hindustan Lalpeth U/G Sub Area of Western Coalfields Ltd. and their workman, Shri Soppar Samaiya, for adjudication, as per letter No.L-22012/227/2002-IR (CM-II) dated 11. 07.2003, with the following Schedule:-

"Whether the action of the management of Hindustan Lalpeth U/G Sub Area of Western Coalfields Limited in dismissing Shri Soppar Samaiya, Loader from services vide office order No. WCL/HLC/-I/Dy.CME/PER/149 dated 30.09.1993 is legal and justified? If not, to what relief is the workman entitled?"

2. On receipt of the reference, parties were noticed to file their respective statement of claim and written statement, in response to which, the workman, Shri Sopar Samaiya ("the workman" in short) through his union, Rashtriya colliery Mazdoor Congress ("the union" in short) filed the statement of claim and the management of Western Coalfields Ltd. ("party no.1" in short) filed their written statement.

The case of the workman as projected by the union in the statement of claim is that it (union) is a registered trade union under the Trade Unions Act, 1926 and party No.1 is a Government company and is a "state" within the meaning of Article 12 of the Constitution of India and the workman was working at Nakoda Incline, Gughus Sub Area of Wani Area as a mud pallet maker, along with seven others and the case of the workman and other mud pallet makers was raised by one union before the ALC(C), Chandrapur and a conciliation settlement was arrived between the management of Wani Area and the said union on 17.04.1989 and in view of the said settlement, the workman was given fresh appointment, ignoring his past service and the workman joined at Nakoda Incline as a piece rated loader, group V-A and the workman was completely illiterate and understood only Telugu language and a bit of Hindi language and in

the month of September, 1992, the workman was transferred to Chandrapur Area and was posted at Hindustan Lalpeth Mine No.1, under Hindustan Lalpeth underground Sub Area and the workman joined his duty and started to perform his duty by under taking journey from Gughus, where he was residing and no arrangement was made by the management to provide the workman with temporary hutment at Hindustan Lalpeth Mine No.1 or in the units of the Sub Area, inspite of having provision, practice and precedent for providing hutment on transfer of workers to a distance place by the management and Gughus was a remote village and public transport was very rare even in day hours and not available in odd hours and due to performing of arduous nature of job in the underground and taking of journey from Gughus to Hindustan Lalpeth Mine No.1 and back, the workman suffered from ailment and the workman always kept the management informed about his sickness and on production of medical certificate and fitness certificate, he was being allowed to resume his duty and the papers so submitted were kept by the party no.1 on record and the workman reported for duty vide his letter dated 16.12.1992 to the Manager, Lalpeth Mine No.1, which was received in the office on 21.12.1992, but he was not allowed to resume duty, inspite of his repeated visits thereafter and party No.1 harassed and victimized the workman due to non receipt of the LPC and other service records from Nakoda Incline and he was not allowed for duty for the same, inspite of his reporting for duty, vide his letter dated 16.12.1992 and the workman received an order of dismissal from service bearing No.1493 dated 30.09.1993 of Dy. CME/Manager, Hindustan Lalpeth Mine No.1, by registered post with AD, in which, he was informed about his dismissal from service w.e.f. 30.09.1993 and the workman approached the management times without number, but his case was not considered.

It is further pleaded by the union that letter No.1695 dated 01.10.1995 issued by the Sub Area Manager, Hindustan Lalpeth Sub Area by registered post with AD was received by the workman, in which, he was intimated to apply for reconsideration of his case, as it was decided by the management to reconsider the cases of the employees dismissed from services, on the ground of absenteeism and accordingly, the workman made application supported with documents, but neither the same was considered nor replied and ultimately, it (Union) raised the industrial dispute before the ALC(C), Chandrapur and due to failure of the conciliation, the reference was made.

The further case of the union is that the charge sheet so drawn against the workman was not served on the workman and the same was also not published in any news paper having wide circulation in the State and therefore, for all purposes, the charge sheet did not exist

and the charge sheet was vague, concocted and mischievous and the entire action taken on the basis of such a charge sheet was void and since the charge sheet was not served on the workman, there is no need to go further into the facts of the case and the entire action is required to be quashed and notice of the enquiry, the copy of the report of the enquiry officer and 2<sup>nd</sup> show cause notice were not served on the workman, which caused great prejudice to the workman and his interest was grossly affected and the entire action has to be quashed and the punishment has been approved by the appellate authority, which is illegal, bad in law and against the principles of natural justice and so also the provisions of clause 30 of the Standing Order and thereby, the workman lost the chance of appeal and the workman is entitled for reinstatement in service with continuity and full back wages.

3. The party no.1 in the written statement has pleaded inter-alia that the workman came on transfer from Nakoda Incline, Wani Area and reported for duties at HLC-1 on 14.09.1992 and in view of his absence from duties since 23.11.1992, a show cause notice was served on him on 12.06.1993 (wrongly mentioned as 12.06.2003 in the written statement), under clause 9 (d) of the Certified Standing Orders applicable to the said mine and the workman was served charge sheet under clauses 13(b) 4 and 13 (b) 7 of the certified standing orders on 19.06.1993 (again wrongly mentioned as 19.06.2003 in the written statement) vide letter no. 1417, for absenting duties unauthorisedly w.e.f. 23.11.1992 and as the workman did not respond to the charge sheet, a domestic enquiry was constituted by appointing Shri S.A. Basha, the then Personnel Manager for making enquiry into the charge sheet and the enquiry officer served notice to the workman for attending the enquiry on 28.07.1993 and 29.07.1993 and the workman was also informed that in case of his not attending the enquiry, the enquiry would be held ex-parte against him and the notice of the enquiry was served in consonance with clause 14 (2) of the Certified Standing Orders and accordingly, the enquiry was held exparte on 29.07.1993 and the disciplinary authority reviewed the report of the enquiry officer and gave approval for dismissing the workman from service and the workman was dismissed from service from 30.09.1993.

It is further pleaded that the party no.1 that after waiting for a period of one year, the decision was taken for dismissing the workman from service and the dispute was raised by the union after a lapse of ten years and the same is a stale claim and no relief can be granted to the workman, in view of the judgments of the Hon'ble Courts.

It is also pleaded by the party no.1 that the workman had never submitted any medical certificate in respect of his absence from duties and the workman on 21.12.1992 had only intimated to the management that he was not feeling well since 15.11.1992 and the moment he would

become fit, he would resume duties, but he had not submitted any authentic medical certificate along with prescription and remained absent from duty for long period and as the workman had received the dismissal letter and other letters, then he might have received the notice of enquiry as well as charge sheet, which were sent at his local address as well as permanent address and though the workman was issued with the letter for filing of application for review of his case, he never approached the management for reviewing his case at the relevant period and it had followed all formalities, while serving charge sheet as well as holding the enquiry, as per the terms and conditions laid down in the certified standing orders and the workman neither approached for collecting the enquiry report nor made any representation, asking for the proceedings as well as the enquiry report and supply of enquiry report and second show cause notice is not a serious issue in this case and the charge sheet was issued at the local address as well as permanent address through registered post with A.D., but the same was returned back with report that the “concerned person is not traceable” and the charge sheet was not vague and did not have any infirmity and the enquiry was conducted in consonance with the principles of natural justice, by giving opportunity to the workman and the workman is not entitled to any relief.

4. In the rejoinder, the union has denied the allegations made in the written statement and has reiterated the facts mentioned in the statement of claim. It is also pleaded that the new certified standing order came into operation as and from 27.02.1993 and as such, drawing of charge sheet on 17/19.06.1993 against the workman under the previous standing orders, which was already revoked and not operative on and from 27.02.1993 was illegal and liable to be quashed and thus, the departmental enquiry conducted against the workman and punishment imposed are also illegal and liable to be set aside and quashed and the workman is entitled for reinstatement in service with continuity and full back wages and all consequential benefits.

5. As this is a case of dismissal of the workman from service as punishment, after holding of a departmental enquiry, the fairness or otherwise of the departmental enquiry was taken up for consideration as a preliminary issue and by order dated 06.06.2014 the departmental enquiry conducted against the workman was held to be illegal and unjustified.

It is to be mentioned here that as party no.1 had made prayer to allow it to lead evidence to prove the charge against the workman, in case of holding the departmental enquiry to be unfair, the prayer made by the party no.1 was allowed and party No.1 was allowed to lead evidence to prove the charge against the workman before this Tribunal. However, inspite of giving of several

opportunities to the party No.1, party No.1 failed to adduce any evidence to prove the charges levelled against the workman before this Tribunal.

6. It is well settled by the Hon’ble Apex Court in a number of decisions that, “If on the other hand, there is violation of the principles of natural justice, the Tribunal will then give opportunity to the employer to produce evidence, if any and also to the workman to rebut it if he so chooses. In the latter event, the Tribunal will be entitled to arrive at its own conclusions on merits on the evidence produced before it with regard to the proof of the misconduct charged, and the Tribunal, then, will not be confined merely to consider whether a prima facie case is established against the employee. In other words, in such an event, the employer’s findings in the domestic inquiry will lapse and these will be substituted by the independent conclusions of the Tribunal on merits.

Keeping in view the above mentioned settled principles, now, the present case in hand is required to be considered.

As no evidence has been adduced by the party No.1 in this case to prove the charges levelled against the workman, before this Tribunal, it is found that party No.1 has failed to prove the charges against the workman.

7. Now, the only question remains for consideration is as to what relief or reliefs the workman is entitled.

As party No.1 has failed to prove the charges against the workman, the workman is entitled for reinstatement in service with continuity. So far the back wages is concerned, taking in view the facts and circumstances of the case in its totality; I think that payment of 50% of the back wages will meet the ends of justice in this case. Accordingly, the workman is entitled for 50% of the back wages from the date of his dismissal till the date of his actual reinstatement in service. The workman is also entitled for all the consequential benefits. Hence, it is ordered:-

### ORDER

The action of the management of Hindustan Lalpeth U/G Sub Area of Western Coalfields Limited in dismissing Shri Soppar Samaiya, Loader from services vide office order No. WCL/HLC/-I/Dy.CME/PER/1493 dated 30.09.1993 is illegal and unjustified. The workman is entitled for 50% of the back wages from the date of his dismissal till the date of his actual reinstatement in service. The workman is also entitled for all the consequential benefits. In case, the workman has already attained the age of super annuation, then he be reinstated in service notionally and the wages and other consequential benefits be calculated accordingly and be paid to the workman. The party No.1 is directed to comply with the directions given in the award within one month



of the publication of the award in the official gazette, failing which, the amount due to the workman will carry interest at the rate of 8% per annum from the date of due to the date of actual payment of the amount to the workman.

J. P. CHAND, Presiding Officer

नई दिल्ली, 25 सितम्बर, 2014

**का.आ. 2647.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार डब्ल्यू. सी. एल., के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ सं. 122/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 25.09.2014 को प्राप्त हुआ था।

[ सं. एल-22012/356/2003-आईआर (सीएम-II) ]

बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 25th September, 2014

**S.O. 2647.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 122/2004) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the Industrial Dispute between the management of the Nandgaon Incline of Hindustan Lalpeth UG Sub Area of WCL, and their workmen, received by the Central Government on 25.09.2014.

[No. L-22012/356/2003-IR (CM-II)]

B. M. PATNAIK, Desk Officer

#### ANNEXURE

**BEFORE SHRI J.P.CHAND, PRESIDING OFFICER,**

**CGIT-CUM-LABOUR COURT, NAGPUR**

Case No. CGIT/NGP/122/2004

Date: 12.09.2014.

Party No.1 : The Sub Area Manager,  
Nandgaon Incline of Hindustan  
Lalpeth UG Sub Area of WCL,  
PO:Lalpeth,  
Tah & Distt. Chandrapur.

V/s.

Party No.2 : Sh. Lomesh Khartad,  
General Secretary,  
National Colliery Mazdoor Congress,  
Dr. Ambedkar Nagar,  
Ballarpur,  
Dist.: Chandrapur.

#### AWARD

(Dated: 12<sup>th</sup> September, 2014)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of WCL and their workman, Shri Subrahmaniyam Setty, for adjudication, as per letter No.L-22012/356/2003-IR (CM-II) dated 28.10.2004, with the following schedule:-

"Whether the action of the management in relation to Hindustan Lalpeth Sub-Area of WCL in terminating the services of Shri Subrahmaniyam Setty, Sweeper, Nandgaon Incline of Hindustan Lalpeth UG Sub Area of WCL vide office order no. 1783 dated 22.10.2001 is legal and justified? If not, to what relief the workman is entitled?"

2. On receipt of the reference, parties were noticed to file their respective statement of claim and written statement, in response to which, the union, "National Colliery Workers Congress", ("the union" in short) filed the statement of claim on behalf of the workman, Shri Subrahmaniyam Setty, ("the workman" in short) and the management of WCL, ("party no.1" in short) filed the written statement.

The case of the workman as presented in the statement of claim by the union is that it (union) is a registered trade union under the Trade Unions Act, 1926 and the party no.1 is a government company and is a state within the meaning of article 12 of the constitution of India and the workman was appointed on 22.12.1986 at Hindustan Lalpeth Mine no.3 and he was transferred to Nandgaon Incline in May, 1997 and the workman while working as a sweeper was exposed to frequent serious diseases and the workman developed mental illness and on 16.05.1999 though he went for duty, he was found roaming as a mad person by his relations, so the workman was taken by his relative to the hospital at Nagpur for treatment and Smt. Yasodbai, the wife of the workman informed such facts to the party no.1 vide her letter dated 19.05.1999, which was sent under certificate of posting and she also again informed party no.1 vide her letters dated 03.06.1999 and 10.06.1999 sent under certificate of postings about the treatment of the workman for mental illness and the relatives/well wishers of the workman also informed the Personnel Manager, Nandgaon Incline about the treatment of the workman for mental illness by sending two telegrams dated 01.07.1999 to 04.12.1999 from Central Telegraph Office, Nagpur and the workman after having been declared fit by the doctors under whom he was under treatment, reported for duty on 07.06.2002 and submitted the original certificate dated 30.04.2002

and 06.06.2002 issued by Dr. M.T. Dodake and the certificate dated 06.06.2002 was countersigned by the Civil Surgeon, Nagpur and the senior Medical Officer, Nandgaon Incline forwarded the said two medical certificates to Personnel Manager, Nandgaon Incline on 07.06.2002 and the Personnel Manager remanded, "He is terminated from services", so he was not allowed to resume duty.

The further case of the workman as presented by the union is that the workman approached the party no.1 time and again to allow him to resume duty personally and also in writing vide his letter dated 13.06.2002, but his request did not yield any result and the workman received letter no. 904 dated 19.10.2002 of the Dy. Personnel Manager, Nandgaon Incline in which, he was directed to apply for settlement of CMPF accumulation, gratuity and pension under Coal Mines Pension Scheme as his name was struck off from the rolls of the company on account of termination vide office order no. 1783 dated 21/23.10.2001 and the workman had neither received any charge sheet, show cause, letter of termination or any other relevant and connected document as he was undergoing treatment at Nagpur and he himself and the union made further correspondence at different levels to allow him (workman) to resume duty with continuity and payment of back wages and other consequential benefits, but his case was not considered and the workman also made an appeal on 31.03.2003 to the Chairman-Cum-Managing Director with copy of the same to the Suptd/Manager, Nandgaon Incline, Sub-Area Manager, Hindusthan Lalpeth underground Sub-Area and the Asstt. Labour Commissioner (Central), Chandrapur but his appeal remained unheard and the same was neither considered nor replied to.

It is also pleaded by the union on behalf of the workman that the charge sheet was not served on the workman and the charge sheet is vague and the notice of the enquiry was also not served on the workman and there was violation of the principles of natural justice and the entire enquiry proceedings is liable to be quashed and the report of the enquiry was also not served on the workman and there was also no second show cause notice before imposition of the punishment and as such, the termination of the services of the workman is illegal and the appellate authority acted as the disciplinary authority and passed the order of punishment and the order was a mechanical order without application of mind and the report of the enquiry is perverse and the enquiry is unfair and illegal.

The union has prayed for the reinstatement of the workman with continuity and full back wages.

3. The party no.1 in the written statement has pleaded inter-alia that the dispute is not an industrial dispute as the union is an outside unrecognized union and does not

have appreciable number of employees as its members and the dispute is an individual dispute. The further case of party no.1 is that the workman was appointed in HLC-III colliery in 1986 as a sweeper and he was in habit of remaining absent from his duties unauthorized and he was subsequently transferred to Nandgaon on 07.04.1997 and he was issued with letters No. 781 dated 19.03.1996, No. 283 dated 11.08.1999 and No. 544 dated 15.01.1997 for remaining unauthorized absence from duty for the period from 11.03.1996 to 16.03.1996, 26.07.1997 to 18.08.1997 and 12.10.1997 to 15.10.1997 respectively and the workman was in habit of bringing sick certificates from outside private doctors, where as every colliery was equipped with dispensary to provide free medical treatment to the employees and there was an intimation dated 14.05.1998 from the Dy. Medical Suptd. at Nandgaon colliery about the workman reporting sick at the dispensary on 23.04.1998 and the workman remained absent from duty from 24.04.1998 to 14.05.1998, which clearly show his attitude of indiscipline and the workman was in habit of remaining absent from duty without any pre intimation and to cover his unauthorized absence, he had been submitting medical certificates obtained from private doctors and that too at the time of resuming duties and he had never informed the management about his sickness during the period of sickness either by post or by telephone and while going through the representation and supporting documents, it was found that the medical certificated and representation given to the Manager by the wife of the workman were prepared on the same day and were sent under certificate of posting at Lalpeth post office, instead of submitting the same personally and the medical certificate submitted by the workman without any supporting prescription seemed to be doubtful, where in it was certified by Dr. M.T. Dadke the workman was advised to take rest from 17.05.1999 to 30.04.2002 and the workman was fit for duty from 07.06.2002, where as in her applications dated 19.05.1999, 30.06.1999 and 10.06.1999, the wife of the workman had mentioned about the workman undergoing treatment at Mayo Hospital, but no supporting papers in support of such treatment were filed and the workman remained absent from 07.05.1999 till the date of his termination and principle of natural justice does not have a straight jacket formula and as such, an employee being guilty of remaining absent without leave for a long period and without responding to the notice sent by the management cannot take the plea that neither proper opportunity was offered nor any enquiry was held and the domestic enquiry against the workman was held in consonance with the principles of natural justice and there was no illegality in conducting the enquiry and letters dated 11.05.2000, 26.06.2000, 22.03.2001, 21.05.2001, 18.06.2001 and 20.08.2001 were issued to the workman in his address as recorded in his service register about the enquiry and letter no. 107 dated 24.04.2001 intimating the workman the date of enquiry

to be on 21.05.2001 was refused and returned and the notice of the final sitting of the enquiry, on 20.08.2001 was published in the newspaper, "Chandrapur Samachar" dated 08.08.2001 and in her applications, wife of the workman had mentioned the same address on which all correspondence were made and it shows that though the workman was living on the said address, deliberately managed to return the enquiry letters and though the workman had been given number of opportunities to improve his attendance, he had taken the same very lightly and after holding a detailed domestic enquiry offering full and fair opportunity to the workman he was terminated from services and the charge sheet and so also second show cause notice was sent to the workman by registered post with A.D. and the workman neither approached nor availed the medical treatment from colliery dispensary and he had also never intimated about his disability and the workman is not entitled to any relief.

4. In the rejoinder, it has been pleaded by the union that the plea taken by the management is just to delay the reference and it is well settled position of law that where there is no recognized union, every registered union enjoys the same status and can raise the industrial dispute and the reference is in regard to the illegal termination of the workman from services and as such, the same can be raised by individual also in terms of section 2-A of the Act and the workman had been submitting sick certificates from doctors for his absence, which itself shows that the absence of the workman was for sufficient cause and was not willful and intentional and such certificates were accepted by the management and were never challenged to be fake or forged and it has been admitted by the party no.1 that it was reported that the workman was sick and under medical treatment and as the absence of the workman was due to his sickness about which due intimation was given to the party no.1, the same does not constitute any "misconduct" under the relevant provisions of the certified standing order of WCL and the workman was never served with any correspondence of the departmental enquiry and the enquiry if any is not fair and proper and the entire proceedings and action taken against the workman are liable to be quashed.

5. As this is a case of termination of the services of the workman after holding of a departmental enquiry against him, the fairness or otherwise of the departmental enquiry was taken into consideration as a preliminary enquiry and as per order dated 26.07.2013, the departmental enquiry conducted against the workman was held to be illegal, improper and not in accordance with the principles of natural justice.

As the party no.1 has prayed for allowing it to prove the charges levelled against the workman by adducing evidence before this Tribunal in case of holding the

departmental inquiry to be unfair, the party no.1 was directed to prove the charges against the workman before this Tribunal, by adducing evidence.

It is to be mentioned here that in order to prove the charges levelled against the workman before this Tribunal, party No1 filed the evidence of witness, Shri Bhujangrao C. Narad on 11.09.2013. However, thereafter party No. 1 remained absent and did not take part in the case. As the above named witness was not produced for cross-examination, inspite of giving several opportunities for the same, as per order dated 21.05.2014, the evidence of the said witness on affidavit was expunged and evidence from the side of the party No.1 was closed. Party No.1 has not adduced any evidence before

6. It is well settled by the Hon'ble Apex Court in a number of decisions that, "If on the other hand, there is violation of the principles of natural justice, the Tribunal will then give opportunity to the employer to produce evidence, if any and also to the workman to rebut it if he so chooses. In the latter event, the Tribunal will be entitled to arrive at its own conclusions on merits on the evidence produced before it with regard to the proof of the misconduct charged, and the Tribunal, then, will not be confined merely to consider whether a prima facie case is established against the employee. In other words, in such an event, the employer's findings in the domestic inquiry will lapse and these will be substituted by the independent conclusions of the Tribunal on merits.

Keeping in view the above mentioned settled principles, now, the present case in hand is required to be considered.

As no evidence has been adduced by the party No.1 in this case to prove the charges levelled against the workman, before this Tribunal, it is found that party No.1 has failed to prove the charges against the workman.

7. Now, the only question remains for consideration is as to what relief or reliefs the workman is entitled.

As party No.1 has failed to prove the charges against the workman, the workman is entitled for reinstatement in service with continuity. So far the back wages is concerned, taking in view the facts and circumstances of the case in its totality; I think that payment of 50% of the back wages will meet the ends of justice in this case. Accordingly, the workman is entitled for 50% of the back wages from the date of his dismissal till the date of his actual reinstatement in service. The workman is also entitled for all the consequential benefits. Hence, it is ordered:-

### ORDER

The action of the management in relation to Hindustan Lalpeth Sub-Area of WCL in terminating the services of Shri Subrahmaniyam Setty, Sweeper,

Nandgaon Incline of Hindustan Lalpeth UG Sub Area of WCL vide office order no. 1783 dated 22.10.2001 is illegal and unjustified. The workman is entitled for 50% of the back wages from the date of his dismissal till the date of his actual reinstatement in service. The workman is also entitled for all the consequential benefits. The party No.1 is directed to comply with the directions given in the award within one month of the publication of the award in the official gazette, failing which, the amount due to the workman will carry interest at the rate of 8% per annum from the date of due to the date of actual payment of the amount to the workman.

J. P. CHAND, Presiding Officer

नई दिल्ली, 25 सितम्बर, 2014

**का.आ. 2648.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार डब्ल्यू. सी. एल., के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नागपुर, के पंचाट (संदर्भ सं. 43/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 25.09.2014 को प्राप्त हुआ था।

[सं. एल-22012/116/2004-आईआर (सीएम-II)]

बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 25th September, 2014

**S.O. 2648.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 43/2005) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Nagpur now as shown in the Annexure, in the Industrial Dispute between the management of the Pauni Open Cast Mine Gouri Sub Area of WCL, and their workmen, received by the Central Government on 25.09.2014.

[No. L-22012/116/2004-IR (CM-II)]

B. M. PATNAIK, Desk Officer

#### ANNEXURE

**BEFORE SHRI J.P.CHAND, PRESIDING OFFICER,**

**CGIT-CUM-LABOUR COURT, NAGPUR**

Case No.CGIT/NGP/43/2005

Date: 15.09.2014.

Party No.1 : The Sub Area Manager,  
Pauni Open Cast Mine,  
Gouri Sub Area of WCL,  
Po: Gouri, Tah:Rajura,  
Chandrapur (MS).

**Vs.**

Party No. 2 : Shri Lomesh Khartad  
General Secretary,  
Rashtriya Colliery Workers  
Congress, Dr. Ambedkar  
Nagar, Ballarpur,  
Po & Tah. Ballarpur,  
Chandrapur (MS).

#### AWARD

(Dated: 15<sup>th</sup> September, 2014)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of WCL and their workman, Shri Kisan Viram Kampelliwar, for adjudication, as per letter No.L-22012/116/2004-IR (CM-II) dated 13.05.2005, with the following schedule:-

"Whether the action of the management in relation to Pauni Open Cast Mine Gour Sub-Area of Western Coalfields Limited in terminating the services of Shri Kisan Viram Kampelliwar, Operator, Pauni Open Cast Mine Vide Office Order No. Vekoli/Bakshe/Kha /Pauni/karmic/seva samapti/2002/1787 dated 31.12.2002 is legal and justified? If not, to what relief is the workman is entitled?"

2. On receipt of the reference, parties were noticed to file their respective statement of claim and written statement, in response to which, the workman, Shri K.V.Kampelliwar, ("the workman" in short) through his union, "Rashtriya Colliery Workers Congress", ("the union" in short) filed the statement of claim and the management of WCL, ("party no.1" in short) filed the written statement.

The case of the workman as presented by the union in the statement of claim is that it is a trade union, register under the Trade Unions Act, 1926 and the party no.1 is a Government company and is a "State" within Article 12 of the Constitution of India and the workman was working at Wani Area continuously since 13.09.1983, with unblemished record and the party No.1 proposed to open and start Mungoli project and for the said project, lands were acquired by party no.1 from the villagers of Shakhara Kol Gauri and as management of Wani Area did not give relief/reliefs to the villagers, whose lands were acquired, the workman raised genuine grievances of the villagers with party no.1 at different levels and other concerned authorities, which annoyed the party no.1 and being annoyed and furious, party no.1 was searching opportunity to victimize him by hook or crook and therefore, party no.1 transferred him to Ballarpur Area,



vide office order 4055 dated 05.09.2000 and he was released vide order dated 08.09.2000 immediately and the transfer order suffered from several infirmities and the same was not in accordance with certified standing order and the practice and precedent in WCL is to transfer the junior most person in the category, in case of transfer to any other Areas and the aforesaid orders reveal the facts of victimization and unfair labour practice and he was further posted at Pauni Open cast mine, vide order dated 08.02.2001 and at Mungoli open cast project, from where the workman was transferred, the workman was provided with company's accommodation (no. 20/13-80) and he was living with his 80 years old, ailing and feeble mother in the said quarters at Mungoli and his mother was wholly and solely dependent on him and the party no.1 in a preplanned manner retransferred and posted him at Pauni open cast mine, a remote and far off place and thus he had to go to Pauni and come back to Mungoli, covering a distance of about 160 Kms each day and that too in odd hours and he was neither provided with any temporary shelter nor quarters at Pauni, inspite of his approaches to management at times without number and he also appealed for his transfer back to Mungoli due to the difficulties faced by him, the illness of his mother and his own health problem and having fully realizing his difficulties, the representatives of the five Central Trade Unions operating at Mungoli open cast colliery appealed jointly vide letter dated 05.06.2001, to the Chief General Manager to transfer him back to Mungoli, but to victimize him further, the management of Mungoli open cast project did not issue the last pay certificate, which made it crystal clear that his transfer was done under bad motive and intention and the same was illegal and he repeatedly approached for payment of wages for the work performed by him, but the same was not paid to him and the Suptd. of Mines, Pauni open cast mine started harassing him verbally as well as in writing, directing him to vacate the accommodation allotted and occupied by him at Mungoli open cast Mine, failing which to take disciplinary action against him and for the reasons mentioned above, his health deteriorated and he approached personally to the authorities times without number and appraised them about his position as well as his mother's illness and requested to transfer him back to Mungoli and due to such victimization, the workman suffered both mentally and physically, as a result of which, he remained ill frequently and developed serious problem in spinal cord and he was keeping the management informed about his frequent illness and on submission of fitness certificate, the management being satisfied with the same, had been allowing him to resume duty and he had also informed the party no.1 about his illness, by sending a telegram earlier and the telegram was received by the management on 01.04.2000 and the workman received letter no. 1020 dated 11/15.10.2001 of Suptd. of Mine, Pauni open cast mine, where in, reference was

made about submission of charge sheet no. 375 dated 22/23.06.2001 against him and he submitted his reply to the said letter, vide letter dated 25.10.2001, intimating about his illness and undergoing treatment and that he had already informed about the same by his telegram to the management and requested for withdrawal of the charge sheet under the aforesaid circumstances.

It is further pleaded by the workman that in order to victimize him, a false, fabricated, concocted and vague charge sheet bearing no. 375 dated 22/23.06.2001 had been drawn by the party no.1 and the charge sheet suffered from several serious infirmities and the detailed particulars of habitual absenteeism were not mentioned in the same and documents were not enclosed with the charge sheet and inspite of having sufficient cause of his remaining absent and intimation of his illness by telegram, party no.1 proceeded with the enquiry mechanically and a show enquiry was conducted and the report of the enquiry officer is perverse and the same was out of bias and the enquiry officer did not evaluate and appreciate the 26 documents submitted by him properly and the enquiry officer acted only as a recorder and did not act prudently and impartially and he travelled beyond jurisdiction and put in personal view, without going through the documents and facts on record.

The further case of the workman is that the Suptd. of Mines, Pauni open cast colliery vide letter dated 28.04.2003 informed him to fill up pension forms and CMPF forms for refund in Personnel Department, as he had been discharged from service, vide letter no. 1787 dated 13.12.2002 and he submitted his reply vide his letter dated 05.06.2003, sent by registered post with AD, explaining the circumstances and informing of his having not received the order of dismissal and the report of the enquiry was not served on him, before imposition of the punishment and no second show cause notice was also given to him, which caused great prejudice to him and his interest was grossly affected and as the order of dismissal was not served on him, for all purposes the dismissal order does not exist.

It is also pleaded by the union on behalf of the workman that the workman himself and the union made appeal to the Chairman-Cum-Managing Director, WCL (HQ) vide letters dated 18.04.2003, 19.04.2003, 17.06.2003, 18.06.2003 and 30.07.2003 for the reinstatement of the workman in service and the Area Personnel Manager, Ballarpur area vide letter no. 2926 dated 14.07.2003, informed that the competent authority advised to put up the case once again after 31.12.2003, without mentioning as to who was the said competent authority and the appeal was not disposed of even after considerable time and was kept pending indefinitely in utter disregard to the provisions of the standing order and ruling of the Hon'ble Court and after a lapse of 10

months, the Suptd. of Mines vide letter dated 24/26.04.2004 informed the workman that the Dy. Chief Personnel Manager (IR) WCL (HQ), Nagpur had conveyed the decision of the competent authority that the case of the workman was not considered, as there was no merit in the appeal for reinstatement and the entire action of party no.1 from the stage of drawing the charge sheet to the stage of rejecting the appeal was mechanical and without application of mind and the order of dismissal was approved by the Chief General Manager, Ballarpur Area, the Appellate Authority and as the Appellate Authority acted as the punishing authority, the workman was prejudiced as he lost the scope of preferring the appeal and otherwise also, the punishment of dismissal is too harsh and disproportionate.

Prayer has been made by the union for the reinstatement of the workman in service with continuity, full back wages and all consequential benefits.

3. The party no.1 in the written statement, denying all the adverse allegations made in the statement of claim has pleaded inter-alia that the union and the workman have not approached the Tribunal with clean hands and materials facts have been suppressed and they have misled the facts and on that score, not only the relief prayed for by the union is liable to be refused, but the entire proceeding filed by the union also is liable to be dismissed and the union has no existence in Pauni open cast mine of Ballarpur area and it is also not one of the recognized unions of WCL and as such, the General Secretary of the said union cannot be taken as authorized representative of the workman.

The further case of the party no.1 is that baseless allegations have been made, which are even false to the knowledge of the workman and he is a person, who was not having a clean record and he was in habit of remaining unauthorizedly absent without there being any reason and the statement of claim as filed is nothing but an attempt to gain sympathy from the Tribunal and the workman was initially appointed as a casual loader on 13.09.1983 at New Majri OCM and he was charge sheeted vide letter no. 4056/87 dated 17.02.1988, for unauthorised absenteeism and he was terminated from duty from 19.09.1988, vide ref. No. 2284/88 issued by Dy. CME/Manager New Majri OCM, but he was reinstated in service as HEMM(T) operator Category-I w.e.f. 17.03.1990 and posted to Ghugus open cast mine vide appointment letter no. 1287 dated 27.02.1990 and even after the reinstatement, his conduct was not satisfactory and he was again charge sheeted vide charge sheet no. 96/371 dated 23.03.1996, for causing willful damage to company's property and he wrote a letter to the management threatening hunger strike in support of a suspended worker at Mungoli open cast project and he also threatened the safety officer, Mungoli open cast project of serious consequences and all these facts speak

volumes of the workman and he was then transferred to Mungoli open cast mine w.e.f. 05.06.1995 and he was promoted at Mungoli open cast mine and the workman unauthorizedly absented himself from 2001 and he attended duty only for 24 days in 2001 and 2 days in 2002 and due to continuous unauthorized absence of the workman, charge sheet dated 22/23.06.2001 was issued against him and when no reply was received from him, again a letter dated 11/15.10.2001 was issued to the workman directing him to report for duties within three days of the receipt of the letter, but he did not turn up and as such, order for conducting domestic enquiry was issued by Pauni OCM vide letter dated 19.10.2001 and inspite of the same, the workman remained unauthorizedly absent and hardly joined duties during the period of enquiry, which speaks of his conduct and to justify his absence, the workman submitted some treatment certificates dated 18.03.2001, 19.03.2001, 29.03.2001 and 01.04.2001 from Mungoli dispensary and though he had been declared fit to join duties from 02.04.2001, he did not join his duties and once again, he submitted certificates dated 20.05.2002, 21.05.2002, 24.05.2002, 30.05.2002 and 02.06.2002, which did not indicate that he was unfit for duties and he also submitted more certificates from Ghugus dispensary and community hospital, but not a single certificate justified his long period of continuous absence and further, he was allowed for duties pending departmental enquiry, but he rarely turned up.

Party no.1 has further pleaded that all the principles of natural justice were complied with during the enquiry proceedings and it was categorically proved that the workman was continuously avoiding the enquiry proceedings on the pretext of one or the other and the final sitting of the enquiry was held on 30.09.2002 and being asked by the enquiry officer, as to whether he has anything more to say or as to whether he wants to produce any document, the workman in clear terms stated of his having nothing to say and nothing to produce and that clearly indicates that an impartial and fair enquiry was conducted in which, the workman was offered fair chance to defend himself, following the principles of natural justice and appropriate punishment in such a case is dismissal from services and before imposition of the punishment, the copy of the enquiry report was sent to the workman in his home address by registered post, but it was returned back by the postal department stating that the addressee was not available in the house, so the workman was terminated from services vide order dated 31.12.2002 and the said order was also sent to the workman in his address, but the same was also returned back without service with the remark that addressee was not available in his house and the workman failed to make any representation and the workman was rightly dismissed from service.

It is also pleaded by the party no.1 that the transfer of the workman was purely on administrative ground and was never preplanned and many workers of Pauni OCM were transferred to far away places like PENCH, Kanhan and other subsidiary companies like ECL and the workman was no exception and altogether 446 workers were working at Pauni Colliery and out of them, approximately 193 workers were provided with company's quarters and other workers were staying their own behest and the workman would have made alternate arrangement for accommodation like others and acceptance of application for transfer is purely a discretionary power of the management and as such, the submission of the application by the workman and endorsement of his transfer application by the unions did not create any right on the workman in claiming for transfer to the place of his own choice and quarters were allotted as and when available, based on the norms decided by the house allotment committee and basing on the seniority list finalized by the said committee and as such, the demand made by the workman was illegal and it was the duty of the workman to ask for last pay certificate, if it was not issued and he is trying to shift the burden of his negligence on the management and the workman was paid a sum of Rs. 11,500/- in the form of salary and other miscellaneous advances at the time of his transfer, even though his total attendance was 26 days and there is no truth in the statement that the management choose to victimize the workman by not paying the wages and there was no question of paying wages, when the workman was not performing his duties and after the transfer of the workman, as he did not vacate the quarters provided to him, by letter dated 08.03.2001, he was asked to vacate the quarters as a routine administrative action and it provides medical facilities to all its employees and their dependents as per Rules and mere treatment of an employee at company's dispensaries and hospital does not mean that he can remain unauthorizedly absent at his will and the medical certificates produced by the workman did not justify his continuous long absenteeism and even before his treatment, he was continuously absent from his duties and the workman attended the domestic enquiry on 02.12.2001, 10.12.2001, 03.01.2002, 06.09.2002, 20.09.2002 and 30.09.2002 and copies of the enquiry proceedings were given to him and he signed on the proceedings in token of acknowledgement of receipt of the same and after completion of the enquiry, a copy of the enquiry report was sent in his home address vide letter dated 23/24.11.2002, by registered post with acknowledgement due, but it was returned by the post authorities and principle of natural justice were followed in conducting the enquiry against the workman.

The further case of the party No.1 is that the appeal dated 05.06.2003 of the workman to the Suptd/Manager,

Pauni OCM was replied to vide letter dated 26/28.06.2003, which was duly acknowledged by him and regarding his appeal dated 18.04.2003, a reply was communicated vide letter dated 14.07.2003 to the workman that the competent authority (Chief Manager WCL, HQ, Nagpur) would consider the matter once again after 31.12.2003 and the application of the workman regarding reinstatement was rejected, as there was no merit or ground for his reinstatement and the workman is not entitled to any relief.

4. No rejoinder was filed by the union after filing of the written statement by party no.1.

5. As this is a case of termination of the services of the workman after holding of a departmental enquiry, the fairness, or otherwise of the departmental enquiry was taken up as a preliminary issue for consideration and by order dated 26.11.2013, the departmental inquiry conducted against the workman was held to be legal, proper and in accordance with the principles of natural justice.

6. At the time of argument, it was submitted by the learned advocate for the workman that charge sheet dated 22/23.06.2001 was never served on the workman and the said charge sheet was submitted against the workman on the allegations of remaining unauthorized absence for the period from 13.03.2001 to 31.03.2001 and the charge sheet was under clauses 26.24 and 26.30 of the certified Standing Order and during the relevant period, the workman was ill and he was undergoing medical treatment and he produced medical certificates in support of his illness before the Enquiry Officer and the Enquiry Officer did not consider the evidence produce by the workman and his report was one sided and as such, the findings of the Enquiry Officer are perverse and the absence from duty by the workman was the result of his illness and treatment and the Enquiry officer in his report dated 21/22.11.2002 has not given any finding that the absence of the workman was willful and in absence of such finding, the absence will not amount to misconduct.

It was further submitted by the learned advocate for the workman that remaining of unauthorized absence from duty by the workman cannot be said to be serious or major misconduct and therefore, the punishment of dismissal is unduly harsh and disproportionate and not sustainable and the copy of the report submitted by the Enquiry Officer and the second show cause notice were not given to the workman before imposition of the major punishment and the same amount to denial of reasonable opportunity to the workman and the clean and unblemished past service record of the workman was not taken into consideration, while inflicting the punishment of dismissal against the workman and the workman is not gainfully employed since the date of his dismissal



and the workman is entitled for reinstatement in service with continuity and full back wages.

In support of the submissions, the learned advocate for the workman placed reliance on the decisions reported in Supreme Court of India (Civil Appeal no. 2106 of 2012 (Krushnakant B. Parmar Vs. Union of India), 2009 III CLR-645 (Chairman-Cum-Managing Director, Coal India Limited & Aur Vs. Mukul Kumar), 2008 III CLR-328 (Depot Manager, APSRTC Vs. V. Surender) and Delhi High Court W.P. (C) 1327/2014 Delhi (Transport Corporation Vs. Devender Kumar).

7. Per contra, it was submitted by the learned advocate for the party no.1 that this dispute has been raised by shri Lomesh Maruti Khartad as the General Secretary of the union and there is no post of General Secretary in the regional unit and as such, the assumption of the said designation by Shri Khartad is unauthorized and void and therefore, raising of the dispute by him and signing of the statement of claim as the General Secretary has no legal entity and moreover, the union is an industrial union and it does not have 25% of the workers as its members and the union cannot be said to have assumed representative character and therefore, it has no right to raise the dispute on behalf of the workman. It was further submitted by the learned advocate for the party no.1 that there was no resolution by the executive committee of the union to espouse the cause of the workman and therefore, the industrial dispute raised by the union is invalid and void and legally there is no industrial dispute at all. It was also submitted by the learned advocate for the party no.1 that by order dated 26.11.2013, the Tribunal has already held the departmental enquiry conducted against the workman to be legal, proper and in accordance with principles of natural justice and the workman had been terminated from services from 10.09.1988, for the misconduct of absenteeism from duties and later on, as per his application, he was reinstated in service as operator (T)-category-I w.e.f. 17.03.1990 and posted at Ghugus open cast Mine and even after the reinstatement, the conduct of the workman was not satisfactory and he was charge sheeted vide charge sheet dated 23.03.1996, for causing willful damage to company's property and he wrote a letter to the management threatening to sit on hunger strike, in support of a suspended worker at Mungoli Open Cast project and he also threatened the safety officer of Mungoli Sub-Area of serious consequences and all these facts speak volumes of the workman and he was transferred from Mungoli OC Project to Pouni OCM and he joined at Pouni on 08.02.2001 and his attendance from the date of his joining till 31.12.2002, the date of his dismissal was only for 27 days and the findings of the enquiry officer are based on the evidence on record of the enquiry and there is no perversity in the findings and before imposition of the punishment, the competent authority examined all aspects

including the past record of the workman and the punishment is not shocking disproportionate to the grave misconduct of habitual absenteeism and unauthorized absenteeism proved against him in a properly conducted departmental enquiry and as such, there is no scope for the Tribunal to interfere with the punishment and the workman is not entitled to any relief.

It is necessary to mention here that though the learned advocate for the party no.1 referred number of decisions in support of the submissions, the said decisions were not filed for perusal of the Tribunal, in absence of which, the said decisions could not be considered.

8. At this juncture, I think it necessary to mention that the submissions made by the learned advocate for the workman in regard to non-supply of the charge sheet, non-supply of the copy of the enquiry report and non-issuance of second show cause notice had already been considered at the time of deciding of the validity or other wise of the departmental enquiry and as such, there is no scope for reconsideration of such submissions again. It is to be further mentioned that as the departmental enquiry conducted against the workman has already been held to be legal, proper and in accordance with the principles of natural justice, there is no scope to consider the evidence adduced by the parties in support of their respective claims and any other submissions in regard to the validity of the departmental enquiry.

9. In view of the submissions made by the learned advocates for the parties, I think it apropos to mention the principles settled by the Hon'ble Apex Court in a number of decisions in regard to the power of the Tribunal to interfere with punishment awarded by the competent authority in departmental proceedings.

In a number of decisions, the Hon'ble Apex Court have held that:-

"The jurisdiction of the Tribunal to interfere with the disciplinary matters or punishment cannot be equated with an appellate jurisdiction. The Tribunal cannot interfere with the findings of the Inquiry officer or competent authority where they are not arbitrary or utterly perverse. The power to impose penalty on a delinquent officer is conferred on the competent authority either by an Act of legislature or rules made under the proviso to Article 309 of the Constitution. If there has been an enquiry consistent with the rules and in accordance with principles of natural justice what punishment would meet the ends of justice is a matter exclusively within the jurisdiction of the competent authority. If the penalty can lawfully be imposed and is imposed on the proved misconduct, the Tribunal has no power to substitute its own discretion for that of the authority. The adequacy of penalty unless it is malafide is certainly not a matter of the Tribunal to concern itself with. The Tribunal also



cannot interfere with the penalty if the conclusion of the Inquiry officer or the competent authority is based on evidence even if some of it is found to be irrelevant or extraneous to the matter.

The Tribunal also cannot interfere with the penalty if the conclusion of the enquiry officer or the competent authority is based on evidence even if some of it is found to be irrelevant or extraneous to the matter.”

It is also settled by the Hon'ble Apex Court that:-

“A review of the above legal position would establish that the disciplinary authority and on appeal, the appellate authority, being fact finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof.”

10. Keeping in view the settled principles as mentioned above, now, the present case in hand is to be considered.

On perusal of the record, it is found that the findings of the enquiry officer are based on the evidence on record of the departmental enquiry. The enquiry officer has analyzed the evidence the evidence on the record of departmental enquiry in a rational manner and has assigned reasons in support of his findings. It is also found that the findings of the enquiry officer are not as such, which cannot be arrived at by a reasonable man on the materials on record of the departmental enquiry. It is not a case of total absence of evidence on record of the enquiry or that the findings of the enquiry officer on totally against the evidence on record. Hence, the findings of the enquiry officer cannot be said to be perverse.

11. It was submitted by the learned advocate for the workman that as there was no findings by the enquiry officer that the absence of the workman was willful the absence of the workman could not be held to be misconduct. In support of such, contentions, the learned advocate for the workman placed reliance on the decisions reported in Supreme Court of India (Supra) and Delhi High Court (Delhi Transport Corporation Vs. Devender Kumar Schagal).

However, it is to be mentioned that clause 26.30 of the certified standing order, under which charge sheet was submitted against the workman specifically says that “Absence from duty without sanction leave or sufficient cause or overstaying beyond ten days after sanctioned leave” is a major misconduct. The enquiry officer in his report, Ext. M-IX has categorically given his findings that the workman remained absent from duties without any sanctioned leave or sufficient cause for the period of absence in question. So, it cannot be said that as there is no findings by the enquiry officer that the absence of the workman was willful, the absence of the workman did not amount to commission of any misconducts. In view of the above stated facts, with respect, I am of the view that the decisions cited by the learned advocate for the workman in that regard have no application to the case in hand.

12. So far the question of proportionality of the punishment is concerned, it is found that grave misconduct of unauthorized absence as well as habitual absenteeism have been proved against the workman in a properly conducted departmental enquiry. Hence, the punishment of termination of the services of the workman cannot be said to be shockingly disproportionate. As this is not a case of only unauthorized absenteeism, but also a case of habitual absenteeism and not only a case of unauthorized absence as in the case in the decisions cited by the learned advocate for the workman, with respect, I am of the opinion that the decisions are quite distinguishable, from the facts and circumstances, of the case. From the facts and circumstances, of the case it is found that there is no scope to interfere with the punishment. Hence, it is ordered:-

### ORDER

The action of the management in relation to Pauni Open Cast Mine Gour Sub-Area of Western Coalfields Limited in terminating the services of Shri Kisan Viram Kampelliwar, Operator, Pauni Open Cast Mine Vide Office Order No. Vekoli/Bakshe/Kha/Pauni/karmic/seva samapti/2002/1787 dated 31.12.2002 is legal and justified. The workman is not entitled to any relief.

J. P. CHAND, Presiding Officer

नई दिल्ली, 25 सितम्बर, 2014

**का.आ. 2649.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार दनकुनी कोलारी कम्पलेक्स, के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय कोलकता, के पंचाट (संदर्भ सं. 28/2010) को प्रकाशित करती है, जो केन्द्रीय सरकार को 25.09.2014 को प्राप्त हुआ था।

[सं. एल-22012/09/2010-आईआर (सीएम-II)]

बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 25th September, 2014

**S.O. 2649.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 28/2010) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Kolkata now as shown in the Annexure, in the Industrial Dispute between the management of the Dankuni Coal Complex, and their workmen, received by the Central Government on 25.09.2014.

[No. L-22012/09/2010-IR (CM-II)]

B. M. PATNAIK, Desk Officer

#### ANNEXURE

#### CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Reference No. 28 of 2010

#### Parties:

Employers in relation to the management of Dankuni Coal Complex

AND

Their workmen

**Present:** JUSTICE DIPAK SAHA RAY, Presiding Officer

#### Appearance:

On behalf of the Management : Mr. Alok Banerjee, Ld. Counsel with Mr. Uttam Kr. Mondal, Ld. Counsel.

On behalf of the Workmen : None

State : West Bengals

Industry : Coal

Dated: 4<sup>th</sup> September, 2014.

#### AWARD

By Order No.L-22012/9/2010/IR(CM-II) dated 03.08.2010 the Government of India, Ministry of Labour in exercise of its powers under Section 10(1)(d) and (2A) of the Industrial Disputes Act, 1947 referred the following dispute to this Tribunal for adjudication:

“Whether the action of the management of Dankuni Coal Complex in promoting Shri Pradip Kumar Bhattacharjee, Asstt. Foreman, Technical Grade C to Foreman Technical Grade B by allegedly superceeding his senior namely Shri Susanta Sarkar is legal and justified? To what relief is the claimant entitled for?”

2. When the case is called out today, none appears on behalf of the union inspite of service of notice, though the management is represented by its Ld. Counsel. It appears from the record that union never appeared in this reference, nor any step has yet been taken on its behalf to proceed with the matter.

3. Considering the above facts and circumstances, it appears that the union is not at all interested to proceed with the case further. So, no fruitful purpose will be served in keeping the matter pending.

4. Accordingly, the instant reference case is disposed of by passing a “No Dispute Award”.

Justice DIPAK SAHA RAY, Presiding Officer

Kolkata,

The 4<sup>th</sup> September, 2014.

नई दिल्ली, 25 सितम्बर, 2014

**का.आ. 2650.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ई. सी. एल., के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, आसनसोल के पंचाट (संदर्भ सं. 108/1999) को प्रकाशित करती है, जो केन्द्रीय सरकार को 25.09.2014 को प्राप्त हुआ था।

[ सं. एल-22012/415/1998-आईआर (सीएम-II) ]

बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 25th September, 2014

**S.O. 2650.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 108/1999) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Asansol now as shown in the Annexure, in the Industrial Dispute between the management of the ECL, and their workmen, received by the Central Government on 25.09.2014.

[No. L-22012/415/1998-IR (CM-II)]

B. M. PATNAIK, Desk Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ASANSOL

**PRESENT :** Sri PRAMOD KUMAR MISHRA,  
Presiding Officer

**REFERENCE NO. 108 OF 1999**

#### PARTIES:

The management of Samala Colliery of M/s. ECL

**Vs.**

Shri Raghu Bhuiya & Others

#### REPRESENTATIVES:

For the Management : Sri. P. K. Goswami Ld. Adv.

For the union : Sri. Rakesh Kumar Gen., Secy.  
(Workman)

INDUSTRY : COAL STATE: WEST BENGAL

Dated- 26.08.14

### AWARD

In exercise of powers conferred by clause (d) of Sub-section(1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), Govt. of India through the Ministry of Labour vide its Order No. L-22012/415/98-IR(C-II) dated 30.07.1999 has been pleased to refer the following dispute for adjudication by this Tribunal.

### SCHEDULE

“Whether the action of the management of Samala Colliery of Pandeveswar Area of M/s ECL in not regularising Sh. Raghu Bhuiya, Bira Bhuiya, Munib Mia, M. M. Gupta, Umesh Yadav, Mahabir Bouri, Manohar Kora and Bablu Dome from P.R. category is legal and justified? If not, to what relief the workmen are entitled ?”

Having received the Order of Letter No. L-22012/415/98/IR(C-II) dated 30.07.1999 of the above said reference from the Govt. of India, Ministry of Labour, New Delhi for adjudication of the dispute, a Reference Case No. 108 of 1999 was registered on 18.08.1999 / 21.09.2001 and accordingly an order to that effect was passed to issue notices through the registered post to the parties concerned directing them to appear in the court on the date fixed and to file their written statements along with the relevant documents and a list of witnesses in support of their claims. In pursuance of the said order notices by the registered post were sent to the parties concerned.

On perusal of the record I find that Sri Rakesh Kumar, General Secretary of the union appears and submits that the case may be closed as the workmen have been converted in T/R category. Since all the workmen have already been converted into T/R category, no dispute exists between the parties. As such the case is closed and accordingly a ‘No Dispute Award’ may be passed.

### ORDER

Let an “Award” be and the same is passed as “No Dispute” existing. Send the copies of the order to the Govt. of India, Ministry of Labour, New Delhi for needful information. The reference is accordingly disposed of.

PRAMOD KUMAR MISHRA, Presiding Officer

नई दिल्ली, 25 सितम्बर, 2014

**का.आ. 2651.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एस. सी. सी. एल., के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम

न्यायालय गोदावरीखानी, के पंचाट (संदर्भ सं. 7/2010) को प्रकाशित करती है, जो केन्द्रीय सरकार को 25.09.2014 को प्राप्त हुआ था।

[ सं. एल-22013/01/2014-आईआर (सी-II) ]

बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 25th September, 2014

**S.O. 2651.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Indus. Tribunal-cum Labour Court, Godavarkhani (IT/7/2010) as shown in the Annexure in the Industrial Dispute between the employers the management of the SCCL, and their workmen, which was received by the Central Government on 25.09.2014.

[No. L-22013/01/2014-IR (C-II)]

B. M. PATNAIK, Desk Officer

### ANNEXURE

#### BEFORE THE CHAIRMAN, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-CUM-VI ADDL. DISTRICT & SESSIONS COURT, GODAVARIKHANI.

**Present:** Sri G. V. Krishnaiah, Chairman-cum-Presiding Officer

MONDAY, THE 4<sup>TH</sup> DAY OF AUGUST, 2014

#### INDUSTRIAL DISPUTE No. 07 OF 2010

#### Between :

Mamidi Ravi, S/o. Komuraiah,  
26 Yrs, Ex.Badli Filler,  
E.C.No. 1003247, GDK 6 Incline,  
PO: Godavarikhani,  
Dist.Karimnagar.

—Petitioner/Workman

#### And

1. The Superintendent of Mines,  
SCCL, GDK 6 Incline,  
PO: Godavarikhani,  
Dist.Karimnagar-505 209 (AP)
2. The Chief General Manager,  
SCCL, Ramagundam Area-I,  
PO: Godavarikhani,  
Dist.Karimnagar. -505 209 (A.P)
3. The Chairman & Managing  
Director, SCCL,  
PO: Kothagudem,  
Dist.Khammam. (A.P).

— Respondents/  
Management.

This Industrial Dispute petition coming on before me for final hearing in the presence of Sri N.Kishan Rao, Advocate, for the petitioner and Sri D.Krishna Murthy,

Advocate, for the respondents, and the matter having stood over before me for consideration till this date, the Court passed the following:-

### AWARD

1. This petition is filed seeking intervention of the Tribunal as per the terms of Sec. 11-A of I.D. Act.
2. The plea of the petitioner is that he was unceremoniously dismissed from service on the ground of absenteeism without considering his explanation that he fell sick. The facts of the case are as follows:

The petitioner was appointed as Badli Filler and joined into service vide proceedings dt.29.03.2004 by the respondent. Subsequently he worked for (121) days in the year 2004 and (31) days in the year 2005. On the ground of absenteeism and not maintaining the minimum attendance the petitioner was dismissed from service. The petitioner was issued Show Cause Notice but he did not give reply. He participated during the enquiry. After the Enquiry Officer submitted his report to the Disciplinary Authority, a report was served on the petitioner along with Show Cause notice. Subsequently the petitioner was dismissed from service with effect from 20.11.2006. While the petitioner contends that the dismissal was uncalled for and harsh punishment. The respondent says that the petitioner did not give reply to the charge sheet and he has to take the consequences.

3. During the course of enquiry, Ex.W-1 to W-5 marked on behalf of the Petitioner/workman and Ex.M-1 to Ex.M-8 marked on behalf of the Respondents/Management.

4. Now the point for consideration is whether the dismissal of the petitioner from service is justified?

5. **Point:-** The fact that the petitioner's attendance during the year 2005 was poor is not in dispute. The fact that the petitioner was issued a charge memo for which he did not give reply is also not in dispute. The enquiry proceedings are marked as M4 and the Enquiry Proceedings show that the petitioner participated in the enquiry. The enquiry report is dt. 08.07.2006 and the enquiry was held on 31.05.2006. Prior to holding of enquiry the counseling was held to the petitioner as can be seen from Ex.M-2. The counseling was held on 06.04.2006 and the petitioner undertook to improve his attendance during the months of April, 2006, May, 2006 and June, 2006. It is pertinent to note that even before the expiry of three months period of observation, the enquiry was held on 31.5.2006. Thus it appears that respondent acted as predetermined mind and conducted enquiry proceedings even before the petitioner could prove his attendance upto to June, 2006. Be that as it may there is another flaw in the course adopted by the Management. After the enquiry report a show cause notice

dt.18.7.2006 was issued asking the petitioner to put in any representation after perusing the enquiry report. This Show Cause Notice is marked as Ex.M-6. It does not contain any specific proposal to dismiss the petitioner from service. Thus the proposed punishment was not specifically informed to the petitioner so that he could have made his representation. In November, 2006 the petitioner was removed from service as can be seen from Ex.M-8.

6. The petitioner joined as Badli Filler in the year 2004. The work of Badli Filler involves a lot of physical strain and in the second year of his employment the petitioner could not put in required minimum musters. Therefore viewed from any angle the punishment of dismissal imposed on petitioner is disproportionate. Further the petitioner was not specifically informed about the proposed punishment. The petitioner being an youngster he can be given an opportunity to serve under the respondent, particularly when the absenteeism took place in the second year of his service.

13. In the result, the order of removal passed by the respondent under Ex.M-8 is set aside and the respondent is directed to reinstate the petitioner into service, but without any back wages. Petitioner is entitled to previous service put in by him for other purposes. Petition is accordingly allowed in terms of above directions.

Dictated to Stenographer Gr.I, transcribed by her, corrected and pronounced by me in the open court on this the 4<sup>th</sup> day of August, 2014.

G. V. KRISHNAIAH, Chairman-cum-Presiding Officer

### Appendix of Evidence

#### Witnesses Examined

For Workman:- Nil-

For Management:- Nil-

#### EXHIBITS

For Workman:-

Ex.W-1	Dt. 15-12-2003	Appointment order as Badli Filler letter issued to the petitioner
Ex.W-2	Dt. 29-03-2004	Office order issued to the petitioner appointed as Badli Filler and posted at GDK.6 Incline
Ex.W-3	Dt. 16-11-2006	Office order – dismissal order issued to petitioner
Ex.W-4	Dt. 13-07-2009	Demand notice
Ex.W-5	Dt. 14-07-2009	Postal Ack., of respondent



**For Management:-**

Ex.M-1	Dt.	08-03-2006	Charge sheet
Ex.M-2	Dt.	04-03-2004	Undertaking letter given by the petitioner after counseling
Ex.M-3	Dt.	28-05-2006	Enquiry notice duly acknowledged by the petitioner.
Ex.M-4	Dt.	31-05-2006	Enquiry proceedings
Ex.M-5	Dt.	08-07-2006	Enquiry report.
Ex.M-6	Dt.	18-07-2006	Show cause notice
Ex.M-7	Dt.	02-08-2006	Postal Ack., of petitioner
Ex.M-8	Dt.	16-11-2006	Office order, dismissal letter to the petitioner.

नई दिल्ली, 25 सितम्बर, 2014

**का.आ. 2652.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एस. सी. सी. एल., के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय गोदावरीखानी, के पंचाट (संदर्भ सं. 43/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 25.09.2014 को प्राप्त हुआ था।

[ सं. एल-22013/01/2014-आईआर (सी-II) ]

बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 25th September, 2014

**S.O. 2652.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Indus. Tribunal-cum-Labour Court, Godavarikhani (IT/ID/43/2011) as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the SCCL, and their workmen, which was received by the Central Government on 25.09.2014.

[No. L-22013/01/2014-IR (C-II)]

B. M. PATNAIK, Desk Officer

**ANNEXURE**

**BEFORE THE CHAIRMAN, INDUSTRIAL  
TRIBUNAL-CUM-LABOUR COURT-CUM-VI  
ADDL.DISTRICT & SESSIONS COURT,  
GODAVARIKHANI.**

**Present:** Sri G.V. Krishnaiah, Chairman-cum-Presiding Officer.

TUESDAY, THE 26<sup>TH</sup> DAY OF AUGUST, 2014

**INDUSTRIAL DISPUTE No. 43 OF 2011**

**Between:-**

Tulasakari Ravinder,  
S/o. Narayana, 27 Yrs,  
Occ: Ex-Badli Coal Filler,  
E.C.No. 2372500,  
H.No. 11-7-573,  
Santhoshnagar,  
8 Incline colony,  
Godavarikhani,  
Ramagundam Mandal,  
Dist. Karimnagar — Petitioner/Workman

And

1. The Colliery Manager,  
Kasipet Mine, Mandamarri Area,  
SCCo.Ltd., PO: Mandamarri,  
Dist. Adilabad (A.P.).
2. The General Manager,  
Mandamarri Area,  
SCCo. Ltd., Dist. Adilabad (A.P.)
3. The Chairman & Managing  
Director, SCCo.Ltd.,  
PO: Kothagudem, — Respondents/  
Dist. Khammam (A.P.) Management

This Industrial Dispute petition coming on before me for final hearing in the presence of Sri K. Sudhakar Reddy, Advocate, for the petitioner and Sri D.Krishna Murthy, Advocate, for the respondents, and the matter having stood over before me for consideration till this date, the Court passed the following:-

**AWARD**

1. This petition is filed seeking reinstatement of the petitioner with back wages and continuity of service. The petitioner was dismissed from service on the ground of habitual absenteeism. The following charge was framed against the petitioner.

“Habitual late attendance or habitual absence from duty without sufficient cause”.

2. Regular domestic enquiry was held. The explanation of the petitioner was that due to sickness he could not attend duty. The allegations in the petition relating to the absence of the petitioner are that the petitioner took treatment from 28.8.2008 to 15.11.2008 and from 9.8.2009 to 26.9.2009 and Certificates were issued by Civil Assistant Surgeon regarding illness of the petitioner. However respondent did not consider the illness of the petitioner and dismissed him from service without conducting proper enquiry.

3. Counter is filed on behalf of the respondents stating that the petitioner ought to have approached the Industrial Tribunal-cum-Labour Court at Hyderabad established by the Central Government because the respondent Company

is managed by the Central Government, that petitioner was appointed as Badli Filler on 23.11.2006 that the petitioner did not put in 190 musters in any one of the calendar years i.e., 2007, 2008 and 2009 that therefore he was served a charge sheet dt. 10.1.2009, as per standing order No. 25.25 that the petitioner submitted his explanation on 18.9.2009 but failed to substantiate his alleged ill-health with documentary evidence, that he did not report sick in the hospital of the respondent company and that he did not communicate his incapability to attend duties that he did not request for sanction of any sort of leave and that therefore enquiry was ordered in which the petitioner participated, that during the enquiry also petitioner could not substantiate his plea of absence due to ill-health that the petitioner did not produce any certificate issued by the Doctors mentioned in the petition, that after enquiry a copy of the enquiry report was sent to him to submit his written representation, that on 18.7.2009 petitioner was counseled by a committee in the presence of his mother, that during the counseling he stated that he is having family disputes and he is alcoholic and assured to be regular in duty that he has given one month time from 1.8.2009, but his attendance was poor that he was given another opportunity on 1.9.2009 and his attendance was not satisfactory that during observation period also he has put in only two musters and that therefore punishment of dismissal was imposed with effect from 18.12.2009 and that therefore the petition may be dismissed.

4. At the time of hearing no documents marked on behalf of the workmen and Exs.M-1 to M-13 are marked on behalf of the Management.

5. Advocate for petitioner filed memo u/s. 11-A of I.D Act with regard to the validity of domestic enquiry.

6. Now the point for consideration is whether the petitioner is entitled to relief of reinstatement into service?

7. **Point:-** This is a case where petitioner did not attend to duties regularly. He was called for counseling in the months of August and September but even thereafter he did not attend duties for 3 days in a month. It is clearly alleged by the respondent that in the presence of mother of the petitioner, he was counseled. But in spite of that he did not choose to attend the job assigned to him. It is not as though the respondent has made false enquiry and dismissed the petitioner. Respondent gave a chance to petitioner to attend the duties regularly but the petitioner failed to avail the same. Under these circumstances this Tribunal does not see any reason to interfere with the order of dismissal.

8. Accordingly petition is dismissed.

G. V. KRISHNAIAH, Chairman-cum-Presiding Officer

## Appendix of Evidence

### Witnesses Examined

For workman:- -Nil- For Management;- -Nil-

### EXHIBITS

For workman:- -Nil-

For Management:-

Ex.M-1	Dt.	10-01-2009	Charge sheet, o/c
Ex.M-2	Dt.	10/18-02-2009	Explanation to charge sheet
Ex.M-3	Dt.	10-05-2009	Enquiry notice-cum-counseling letter acknowledged by the petitioner
Ex.M-4	Dt.	15-05-2009	Enquiry proceedings
Ex.M-5	Dt.	10-06-2009	Enquiry report
Ex.M-6	Dt.	27-06-2009	Show cause notice with ack.,
Ex.M-7	Dt.	18-07-2009	Copy of area level counseling proceedings
Ex.M-8	Dt.	23-07-2009	Mercy petitioner/reply to show cause notice
Ex.M-9	Dt.	26-07-2009	Letter issued to the petitioner by the respondent regarding improvement of attendance.
Ex.M-10	Dt.	09-10-2009	Letter issued to the petitioner by the respondent regarding improvement of attendance.
Ex.M-11	Dt.	03-12-2009	Dismissal order
Ex.M-12	Dt.	04-07-2011	Demand notice
Ex.M-13	Dt.	02-08-2011	Reply of respondent to the petitioner's letter dt.4-7-2011 not considering the reinstatement.

नई दिल्ली, 25 सितम्बर, 2014

**का.आ. 2653.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डब्ल्यू. सी. एल. , के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय जबलपुर, के पंचाट (संदर्भ सं. 126/1991) को प्रकाशित करती है, जो केन्द्रीय सरकार को 25.09.2014 को प्राप्त हुआ था।

[सं. एल-22012/191/1991-आईआर (सी-II)]

बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 25th September, 2014

**S.O. 2653.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 126/1991) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the Industrial Dispute between the management of the WCL, and their workmen, received by the Central Government on 25.09.2014.

[No. L-22012/191/1991-IR (C-II)]

B. M. PATNAIK, Desk Officer

# **ANNEXURE**

## **BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR**

NO. CGIT/LC/R/126/1991

**PRESIDING OFFICER: SHRI R. B. PATLE,**

Organising Secretary,  
Rashtriya Koyla Khadan Mazdoor Sangh,  
Po Chandametta,  
Distt. Chhindwara

Workman/Union

Versus

General Manager,  
Kanhana Area of WCL,  
PO Dungaria,  
Distt. Chhindwara (MP)

Management

# **AWARD**

Passed on this 11<sup>th</sup> day of September, 2014

1. As per letter dated 3-9-91 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No. L-22012/191/91-IR(Coal-II). The dispute under reference relates to:

“ Whether the action of the management of WCL, Nandan Colliery in dismissing the services of Shri Amarlal S/o Dasen, General Mazdoor (Token No. 1159) w.e.f. 1-11-89 is proportionate to the gravity of the offence and justified? If not, to what relief the workman is entitled to?”

2. After receiving reference, notices were issued to parties. Workman submitted statement of claim at Page 4/1 to 4/5. Case of workman is that he was initially employed as General Mazdoor/Tub Loader on 1-1-1974. He completed 16 years continuous service with IInd party. He is illiterate, has no knowledge of the provisions of standing orders, Service Rules. He fell sick on 1-11-1988 and he sent application through his colleague Kuwarlal who has delivered his application to Colliery

Manager. For his own illness, he could not resume his duties. His mother, brother, wife and 2 sons died of chronic disease during December 1988 to June 89. He was mentally upset by death of his family members. There was panic tragedy in family due to death of his family members. Once he was admitted in the hospital and after treatment he was declared medically fit on 25-6-89. He reported on duty. Management not allowed him to join duty. Management informed him that for his absence from duty, he could not be allowed on duty without conducting Departmental Enquiry. Workman further submits that he was not given opportunity for his defence in enquiry conducted by IInd party. The documents were not given to him. Medical Certificate submitted along with his applications were also not produced in his enquiry. The ex parte enquiry was conducted. He was not allowed to cross-examine management's witnesses. Enquiry was conducted in violation of principles of natural justice. That findings of Enquiry Officer were perverse. He was terminated on such findings from 1-11-1989.

3. Workman further submits that in similar circumstances, management compromised some cases involving Shri Ram Bharosey and 13 employees. They were reinstated by management from 20-5-83 in arbitration award. Mehangoo S/o Rajbali was reinstated as per mutual settlement dated 23-11-90 mutually. On such ground, workman prays for his reinstatement.

4. IInd party filed Written Statement at Page 8/1 to 8/4. Relief claimed by workman are denied. As per IInd party, workman was appointed on 1-1-1974. He was in habit of unauthorised absence from duty. From 1-11-88, workman was continuously absent without approval of Competent Authority. On 25-6-89, chargesheet was issued to workman for unauthorized absence. Workman did not participate in Enquiry Proceedings despite of repeated notices. That Enquiry Officer conducted enquiry giving full opportunity. Subsequently when enquiry was fixed on 29-7-89, workman participated with his co-worker. The witnesses were cross-examined. It is submitted that enquiry was properly conducted as per rules. he attendance of workman in 1985 was 79 days, in 1986 was 11 ½ days, in 1987 was 39 days and in 1998 was 91 days. IInd party submits that termination of workman is proved for unauthorized absence.

5. Workman filed rejoinder at Page 10/1 to 10/6 reiterating its contentions in statement of claim and denying assertions in Written statement filed by IInd party.

6. Management filed rejoinder at Page 9/1 to 9/6 reiterating its contentions in Written Statement.

7. Vide order dated 3-9-2012, my predecessor found enquiry conducted against workman proper and legal.

Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

- |   |  |
|---|--|
| (i) Whether evidence in Enquiry Proceedings proves charges of unauthorised absence against workman? | In Affirmative                         |
| (ii) Whether punishment of dismissal from service is proper and legal?                              | In Affirmative                         |
| (iii) If not, what relief the workman is entitled to?"  | Workman is not entitled to any relief. |

### REASONS

8. As stated above, enquiry conducted against workman is found legal and proper. As per order on preliminary issue, my predecessor held that when findings of Enquiry Officer are perverse, it is not necessary for management to adduce evidence to prove charges against workman. Documents about enquiry proceeding are produced at Exhibit M-1 to M-8. The statement of management's witness was recorded in Enquiry Proceedings. The management's representative says in his statement that workman was continuously absent from 1-11-1988. He had not given intimation of his absence from duty. Bonus register, Form B register were produced. He says that working days of workman in 1988 were 55 ½ days. The chart of his working days was produced in Enquiry Proceedings. Statement of time keeper was also recorded and he has given statement about absence of workman from 1-11-88. He was also cross-examined. His evidence on above point is not shattered. It is surprising to say that charge of absence is proved from evidence in Enquiry Proceedings. For above reasons, I record my finding in Point No.1 in Affirmative.

9. Point No.2- as per finding in Point No.1 that charge of unauthorized absence of workman is proved, question arises whether punishment of dismissal from service imposed against workman is exorbitant or excessive. Workman has not adduced evidence after finding in preliminary issue. Evidence on Enquiry Proceedings shows workman was absent from duty for more than 1 year without giving intimation to the management. So far as evidence of witness of workman Kuwarlal, he had left application in office of Manager. At that time nobody was present which is difficult to believe. Considering long absence of workman, punishment of dismissal calls no interference. Counsel for workman Shri S.Pandey declined to advance arguments claiming that he had no instructions. For reasons discussed above, I record my finding in Point No.2 in Affirmative.

10. In the result, award is passed as under:-

- (1) The action of the management of WCL, Nandan Colliery in dismissing the services of Shri Amarlal S/o Dasen, General Mazdoor (Token No. 1159) w.e.f. 1-11-89 is legal.

- (2) Workman is not entitled to any relief.

R. B. PATLE, Presiding Officer

नई दिल्ली, 25 सितम्बर, 2014

**का.आ. 2654.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार डब्ल्यू. सी. एल. , के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय जबलपुर, के पंचाट (संदर्भ सं. 88/1993) को प्रकाशित करती है, जो केन्द्रीय सरकार को 25.09.2014 को प्राप्त हुआ था।

[सं. एल-22012/362/1992-आईआर (सी-II)]

बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 25th September, 2014

**S.O. 2654.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 88/1993) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the Industrial Dispute between the management of the WCL, and their workmen, received by the Central Government on 25.09.2014.

[No. L-22012/362/1991-IR (C-II)]

B. M. PATNAIK, Desk Officer

### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

**NO. CGIT/LC/R/88/1993**

PRESIDING OFFICER : SHRI R.B.PATLE

General Secretary,  
M.P.K.K.M.P(HMS),  
PO Junnardeo,  
Distt. Chhindwara (MP)

...Workman/Union

#### Versus

Manager,  
Damua Colliery,  
WCL, PO Damua,  
Distt. Chhindwara (MP)

...Management



**AWARD**

Passed on this 5<sup>th</sup> day of September, 2014

1. As per letter dated 3-3-93 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section 10 of I.D.Act, 1947 as per Notification No. L-22012/362/92-IR(C-II). The dispute under reference relates to:

“Whether the action of the management of Damua Colliery of WCL, PO Damua, Distt. Chhindwara (MP) in dismissing Shri Udey S/o Bajilal, Casual DPR from services w.e.f. 20-4-90 is justified? If not, to what relief the workman is entitled to?”

2. After receiving reference, notices were issued to the parties. Ist party employees submitted statement of claim at Page 3. The case of Ist party Union is that workman Shri Udey, S/o Bajilal Adivasi was engaged on DPR. He was treated as casual temporary workman. Said workman was not provided job regularly. Mostly he was returned back for want of DPR job. Any chargesheet was not issued to workman. No enquiry was conducted against him. Reasonable opportunity for defence was not allowed. The dismissal order dated 20-4-90 was served on him. The order of his dismissal is illegal. Union prays for reinstatement of workman.

3. Management of IInd party filed Written Statement at Page 6/1 to 6/3. The claim of workman is denied. That workman was on list of casual DPR of Damua Colliery prior to his services were dispensed with. Workman was supposed to present himself on all working days at the place of work for his deployment as and when there is need or some exigencies. That workman was very very irregular and remaining absent without prior permission. His absence was causing difficulties for providing job. Workman was a casual worker. Employers were at liberty to remove his name without any notice. However the management of IInd party wanted to give opportunity to the workman Shri Udey to explain his conduct. Chargesheet was issued to him on 16-6-89. Workman did not submit his explanation to the chargesheet. The enquiry was constituted by Manager of Damua Colliery and workman Shri Udey was also earlier chargesheeted for different charges against him. Workman had not attended Enquiry Proceedings. Enquiry was proceeded exparte. Enquiry Officer submitted his report about unauthorised absence of the workman. All allegations of workman are denied. IInd party prayed for rejection of claim.

4. Vide order dated 9-3-2011, my predecessor found enquiry conducted against workman legal and valid.

5. Considering pleadings on record, the points which arise for my consideration and determination are as under.

My findings are recorded against each of them for the reasons as below:-

- |   |  |
|---|--|
| (i) Whether the alleged misconduct of unauthorized absence of workman is proved from evidence in Enquiry proceedings?   | In Affirmative                         |
| (ii) Whether the action of the management of Damua Colliery of WCL, PO Damua, Distt. Chhindwara (MP) in dismissing Shri Udey S/o Bajilal, Casual DPR from services w.e.f. 20-4-90 is justified? | In Affirmative                         |
| (iii) If not, what relief the workman is entitled to?”  | Workman is not entitled to any relief. |

**REASONS**

6. Enquiry conducted against workman is found legal and proper. Therefore the evidence in Enquiry proceedings needs to be considered whether charges alleged against workman of unauthorized absence are proved from the evidence in Enquiry Proceedings? The chargesheet was issued to workman about unauthorized absence from August 1988 Exhibit M-1. The record of Enquiry proceedings Exhibit M-7/3 shows management's representative produced entries in bonus register Page 214 etc. Attendance of workman is shown only 4 days. The charges alleged against workman are supported by some evidence. Copy of entries of bonus register is produced at Exhibit M-9. It proves charge against workman therefore I record my finding in Point No.1 in Affirmative.

7. **Point No.2-** In view of my finding in Point No.1 that charge of unauthorized absence against workman is proved, question arises whether workman is entitled for reinstatement with back wages. Workman remained absent. He has not participated in reference proceeding. Explaining the circumstances of his absence from duty, affidavit of evidence filed by witness Shri I.P. Bannerjee management's witness has stated that enquiry was conducted against workman. He did not participated in enquiry proceedings. Considering non-participation of workman and charges of unauthorized absence proved against workman. I find reason to interfere with the punishment of dismissal imposed upon workman. For above reasons, I record my finding in Point No. 2 in Affirmative.

8. In the result, award is passed as under :—

(1) The action of the management of Damua Colliery of WCL, PO Damua, Distt. Chhindwara (MP) in

dismissing Shri Udey S/o Bajilal, Casual DPR from services w.e.f. 20-4-90 is legal and proper.

(2) Workman is not entitled to any relief.

R. B. PATLE, Presiding Officer

नई दिल्ली, 25 सितम्बर, 2014

**का.आ. 2655.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार स्टेट बैंक ऑफ मैसूर, के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, मुम्बई के पंचाट (संदर्भ सं. 15/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 22.09.2014 को प्राप्त हुआ था।

[सं. एल-12012/161/2005-आईआर (बी-1)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 25th September, 2014

**S.O. 2655.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 15/2006) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 2, Mumbai as shown in the Annexure, in the Industrial Dispute between the management of the State Bank of Mysore, and their workmen, received by the Central Government on 22.09.2014.

[No. L-12012/161/2005-IR (B-I)]

SUMATI SAKLANI, Section Officer

### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, MUMBAI

**PRESENT:** K.B. KATAKE, Presiding Officer

**Reference No. CGIT-2/15 of 2006**

EMPLOYERS IN RELATION TO THE  
MANAGEMENT OF STATE BANK OF MYSORE

The Assistant General Manager-II,  
State Bank of Mysore, Region-II,  
Hubli Zone, Hubli,  
Karnataka

AND

Their Workmen

1. Shri Sanjay Nakul Morajkar,  
House No. 245, Sumitra Niwas  
Aquem, Malbhat,  
Margao, Goa- 403 681

2. The General Secretary,  
Daily Wages Bank Employees Association,  
9, Sanwer Road,  
Ujjain (M).

### APPEARANCES:

FOR THE EMPLOYER : Mr. S.K. Hegde, Advocate

FOR THE WORKMEN : Mr. S.V. Nabar Advocate

Camp Goa, dated the 20<sup>th</sup> August, 2014

### AWARD PART-II

The Government of India, Ministry of Labour & Employment by its Order No.L-12012/161/2005-IR (B-I), dated 22.02.2006 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2 (A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following industrial dispute to this Tribunal for adjudication:

“Whether the action of the management of State Bank of Mysore, Hubli in discharging Shri Sanjay N. Morajkar, Daftary from service w.e.f. 1/12/2002 is legal and justified? If not, to what relief the workman is entitled for?”

2. After receipt of the reference parties were served with notices. In response to the notice second party workman filed his Statement of Claim at Ex-6. According to the second party workman he worked as a temporary Peon from 1985 with first party Bank. He worked at Margao and Panaji Branch. He worked honestly, diligently and faithfully. Therefore first party regularised the services of the second party as Daftary and he was working in Panaji Branch. While discharging his duties at Panaji Branch on 21/6/2000 one Mr. Somanna, Branch Manager of the first party Bank at Panaji Branch asked the workman to copy a letter written in English. He took the workman to an empty cash cabin and asked to copy the letter in English. The workman is educated upto 9<sup>th</sup> Std. in Marathi medium and was not acquainted with English language. Even he was unable to copy the said draft letter. Mr. Somanna handed over the said letter to disciplinary authority who put the workman under suspension w.e.f. 22/6/2000.

3. A chargesheet dt. 29/12/2000 was served on the workman alleging that on 12/11/1999 he had withdrawn an amount of Rs. 600 from the Savings Account No.114 of Mr. Prakash S. Usgaonkar by forging his signature on the SB withdrawal form and using the services of Shri Shashikant N. Jadhar and also withdrawn amount from the said account of Mr. Prakash Usgaonkar by forging his signature on cheque leaves on different dates by using the service of Shri R.P. Ravarde or Shri Shamshuddin. It is also alleged that to facilitate about withdrawals the workman got the inoperative account No.114 transferred to operative account on 18/11/1999

by forging the signature of account holder on the application form. The workman also collected the cheque books bearing no. 498631 to 498640 by forging signature of Shri Prakash Usgaonkar using services of Shri Sashikant N. Jadhar and thereby committed misconduct as per Bipartite settlement para 19.5 punishable for a major penalty as per Bipartite settlement para 19.6. The workman was called to reply the charges. Disciplinary Authority appointed Mr. Charles Ravi Kumar as Inquiry Officer. However subsequently they changed the IO and appointed Mr. N.V. Chandar, Chief Manager, and also appointed K. Udayachandra Joshi, D.M. Head Office as Presenting Officer. The workman was allowed to take help of defence representative to defend the charges in the inquiry. During the course of inquiry the Presenting Officer examined Bank witnesses. The witness of the workman was also examined. The DR submitted written statement. The IO held the workman guilty for all the charges and submitted his report to the disciplinary authority. Disciplinary authority called explanation from the workman on the inquiry report and findings of IO. He submitted his explanation stating that findings of the IO are baseless and imaginary. He has not applied his mind. Findings are in gross violation of principles of natural justice. After submission of the explanation disciplinary authority issued show cause notice to the workman stating that charges are proved against him. The workman submitted his detailed explanation to the disciplinary authority highlighting many facts, evidence and circumstances as to how the charges against him are baseless and how the findings are perverse. The disciplinary authority gave him personal hearing and finally passed the order of discharge of the workman from service of the bank. Workman preferred appeal against the said order. The Appellate Authority gave him personal hearing. However they dismissed the appeal.

4. According to the workman the inquiry was not fair and proper. Findings are perverse. Therefore the workman raised industrial dispute before ALC ©. However as conciliation failed, on report of ALC ©, the Central Labour Ministry sent the reference to this Tribunal. The workman therefore prays that the impugned order dt. 30/11/2002 passed by Disciplinary authority and the order of Appellate Authority 30/04/2003 be quashed and set aside. The workman also prays that the management be directed to reinstate him as Daftary in the service of the Bank from 30/11/2002 with continuity of services, full back wages and all other consequential benefits.

5. The first party resisted the statement of claim vide their written statement at Ex-11. They denied the contents in the statement of claim. They denied that the Branch Manager Somanna asked the workman to copy a letter written in English as has been alleged. The workman has written the letter voluntarily and he knows English

very well. They denied all the contents in the statement of claim. According to them the Inquiry Officer has conducted inquiry. It is fair and just. Sufficient opportunity was given to the workman to defend himself. His representative has cross examined the witnesses of the management. The workman has availed all the opportunities to defend himself. Fair and sufficient opportunity was given to the workman in the inquiry proceeding. All the witnesses were examined in his presence. Copies of the relevant documents were given to him. He was found guilty of serious offence of forgery and criminal breach of trust. The I.O. has given opportunity to the workman to defend himself. He filed his report to the disciplinary authority. Copy of the report and findings was sent to the workman by the disciplinary authority with show cause notice. After giving him personal hearing the disciplinary authority discharged the workman from service. The charges proved against the workman were of gross misconduct. Therefore he was rightly discharged from services. Therefore first party prays that the reference be dismissed with cost.

6. In Part-I Award my Ld. Predecessor held that inquiry was not fair and proper and the findings of the I.O. were perverse and opportunity was given to the management to justify their action.

7. Now in Part-II award following are the issues for my determination. I record my findings thereon for the reasons to follow.

Sr. No.	Issues	Findings
1.	Whether the workman is guilty for the alleged misconduct of forgery and withdrawal of amount from the account of Mr. Prakash Usgaonkar?	Yes.
2.	If yes, whether the punishment of discharge from service is shockingly disproportionate to the proved misconduct?	Yes.
3.	What order?	As per order below.

### REASONS

#### Issue no.1:—

8. In this respect the Id. Adv. for the second party workman submitted that in the part-I award it was held that inquiry was not fair and proper and an opportunity was given to the management to justify the charges levelled against the workman. In spite of that the management has not examined the main witness Mr. Prakash Usgaonkar. They have also not examined the investigating officer Mr. Sonawane. There is no evidence to show that the workman has put the forged signature of

Mr. Usgaonkar. Witness Mr. Jadhav and Shamsudin were also not examined. Therefore according to the second party there is absolutely no evidence of alleged misconduct by the workman. It is also submitted that even management has not filed Police case in respect of the alleged offence of forgery and misappropriation. Therefore Ld. Adv. submitted that the management miserably failed to establish the charges against the workman.

9. As against this the Ld. Adv. for the first party submitted that the customer Mr. Prakash Usgaonkar though is not examined in this proceeding, his written complaint is on record at Ex-73. As per this complaint he has contended that he has never withdrawn any amount from his account either by withdrawal slip or by cheque and the withdrawal entries in his account are false and wrong. Therefore he has requested to rectify the entries. After receipt of his complaint the Branch Manager verified and enquired with the staff members. It is the case of the management that the workman confessed to have withdrawn the amount by putting forged signatures of the customer and had taken help of some other employees. It is the case of the management that the workman has put his confession in writing. In this respect according to the workman Mr. Somanna, Branch Manager asked him to copy a letter written in English and he prepared the letter and handed it over to Mr. Somanna. On the basis of the said letter the Disciplinary Authority put him under suspension and initiated inquiry against him. The said letter of confession is admittedly in the handwriting of the workman. He has neither disputed his handwriting and signature thereon. According to him Mr. Somanna got the said letter written from him without knowing contents therein. As handwriting and signature is not disputed, this letter is exhibited as Ex-89.

10. In this respect I would like to point out the letter Ex-84 written by a customer by name Samsudin. The true translation of this Kannad letter is on record at page no.18 with list Ex-12. As per this letter Mr. Samsudin has given in writing that a cheque no. 498632 of Rs. 20,000 was given to him by the workman. He further contended that when he came in the Bank he saw the cheque and confirmed that it was the same cheque given by the workman. He has given the cheque amount to the workman. Another customer Mr. Jadhav by his letter Ex-85 contended that workman is his friend and at his instance he had been to the Bank and had filled up withdrawal form for Rs. 600 by signing as P.N. Sawant. He did it as requested by workman. He received the amount and handed over the cash to the workman, Sanjay. He further contended in his letter that the workman requested him to come to Bank and write a letter for issuance of cheque book. He did it and he handed over the cheque book to the workman and he has signed as

P.N. Sawant for receiving the cheque book. He has also identified the voucher dated 12/11/1999 filled up for S.B. Withdrawal form but he has not signed below it. He has signed it on the back. He has also identified his signature in the cheque book register and signed as P.S. Usgaonkar for having received the cheque book and it was done as per the advice of the workman. In this respect I would also like to refer the deposit slip at Ex-86. By this slip the workman has deposited an amount of Rs. 36,100 in the S.B. Account no.114 which is of Mr. Usgaonkar.

11. All these evidence on record though not sufficient to record conviction in a criminal proceeding. However in the departmental inquiry this evidence is sufficient to hold the workman guilty for forgery and misappropriation. The entire argument of the Ld. Adv. for the second party is prepared in the line of standard of proof in a criminal trial wherein the guilt is required to be proved beyond all reasonable doubts. So far as standard of proof in departmental inquiry is concerned, preponderance of probability suffices the purpose. The management is not required to prove the charges beyond reasonable doubts as required in a criminal trial. The version of the workman does not stand to reasons that a Branch Manager compelled him to copy a letter and accordingly he prepared it or signed it. His version is also not acceptable that he was compelled and forced to deposit the amount. In departmental inquiry witness Usgaonkar or the other witnesses need not be examined. The person to whom he has submitted the complaint or letter can prove the same and the same can be read in evidence. Therefore non-examination of Mr. Usgaonkar, Mr. Jadhav and Mr. Samsuddin does not affect the merit of the case.

12. In respect of the confession of the workman, the Ld. Adv. for the first party submitted that on that basis the Inquiry Officer could have held him guilty and no further inquiry was necessary. In support of his argument the Ld. Adv. resorted to Karnataka High Court ruling in Union Bank of India V/s. Babu Mahadevappa Andani ILR 2007 KAR 1407. Wherein the Hon'ble court observed that;

“When the employee/workman admits his guilt by submitting his confessional letters, there is no need for the Inquiring Officer to further proceed with the inquiry.”

13. In the light of the letters of two other witnesses, the letter of confession written by the workman appears to have been written by him wherein he has prayed for mercy and apology. He has also deposited the amount he had fraudulently withdrawn from S.B. A/c. no.114. In the circumstances I hold that the management has proved the charges levelled against the second party workman. Accordingly I decide this issue no.1 in the affirmative.



**Issue No. 2:-**

14. In respect of punishment it was submitted on behalf of the Bank that, the workman is employee of Bank and expected to be very honest. The employees of Bank are entrusted with public funds and no dishonest employee should be allowed to serve in an institute like Bank. I do agree with the proposition that employee of Bank must be utmost honest and loyal to the institution. At the same time I would also like to point out that in the case at hand the Bank officials were not required to go to Police to lodge complaint. Furthermore as per the case of the management at the first instance workman has confessed to have withdrawn the amount. He has also contended that his mother was seriously ill and he spent the amount on the treatment of his ill taken mother. When the mischief came to light, the workman has collected the amount and deposited the same in the account of Mr.Usgaonkar. In his letter of confession at Ex-89 it was also mentioned that it is his first mistake and he will not do any such thing in future and repeatedly prayed to forgive him and pardon him for the mistake he has committed. He has also written in the letter that he has credited the amount of Rs.36,100 in the SB A/c. no.114. He has repented for the mistake he has committed and has also mentioned that he has spent the amount for the treatment of his aged ill taken mother. Though his confessional statement is not proved by the management, it is exhibited as Ex-89 being referred by the workman himself in his statement of claim. The workman is a poor fellow, was in need of money for the treatment of his mother. He was serving in the Bank as a Peon. He has withdrawn small amounts total to the tune of Rs.36,100/-. He has also confessed immediately and deposited the amount. He is out of service since for about last 12 years and has learnt a lesson and not expected to repeat such an act. In such cases reformatory attitude is required to be taken.

15. In the circumstances imposing the extreme punishment of dismissal or discharge from service appears to be shockingly disproportionate. Chance of reformation is required to be given to such workman. In the circumstances to meet the end of just I think it proper to direct the first party to reinstate the workman without any back wages and withholding two increments. That would suffice the purpose. Thus I partly allow the reference and proceed to pass the following order:

**ORDER**

Reference is partly allowed with no order as to cost.

The first party is directed to reinstate the workman without any back wages and withholding his two increments.

20.08.2014  
Camp: Goa

K. B. KATAKE, Presiding Officer

नई दिल्ली, 25 सितम्बर, 2014

**का.आ. 2656.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार स्टेट बैंक आफ हैदराबाद, के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, हैदराबाद के पंचाट (संदर्भ सं. 119/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 02.09.2014 को प्राप्त हुआ था।

[सं. एल-12025/01/2014-आईआर (बी-1)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 25th September, 2014

**S.O. 2656.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 119/2005) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Hyderabad as shown in the Annexure, in the Industrial Dispute between the management of the State Bank of Hyderabad, and their workmen, received by the Central Government on 02.09.2014.

[No. L-12025/01/2014-IR (B-I)]

SUMATI SAKLANI, Section Officer

**ANNEXURE**

**BEFORE THE CENTRAL GOVERNMENT  
INDUSTRIAL TRIBUNAL-CUM-LABOUR  
COURT AT HYDERABAD**

**Present:** Smt. M. VIJAYA LAKSHMI, Presiding Officer

Dated the 28<sup>th</sup> day of February, 2014

INDUSTRIAL DISPUTE L.C.No.119/2005

**Between:**

Sri K. Rameshwar,  
S/o K. Eshwar,  
C/o A.P. Industrial Employees Union,  
“House of Labour”, King Kothi Road,  
Hyderabad – 29

...Petitioner

**AND**

1. The Dy. General Manager,  
Personnel Department,  
State Bank of Hyderabad,  
Gunfoundry Head Office,  
Hyderabad

2. The Branch Manager,  
State Bank of Hyderabad,  
Mallepally Branch,  
Mallepally,  
Hyderabad

...Respondents

**Appearances:**

For the Petitioner : M/s. V. Viswanatham &  
R. Dushyantla, Advocates

For the Respondent : Sri A.V.S.S. Prasad, Advocate

**AWARD**

This is a petition filed by Sri K. Rameshwar invoking Sec.2A(2) of Industrial Disputes Act, 1947 (who will be referred to as workman) has filed this petition against the Respondents seeking for passing an award directing the Respondent to reinstate the Petitioner into service from 10.10.2005 with full back wages and all other attendant benefits with continuity of service and to pay interest @ 12% p.a. on the back wages and costs.

**2. The averments made in the petition in brief are as follows:**

Petitioner was appointed by the 2<sup>nd</sup> Respondent as casual labour in the year 1989 and he was being paid wages @ Rs.50/- per day at the Mallepally branch, whereas casual labours working at Gunfoundry Branch and Kakatiyanagar Branch are being paid wages @ Rs.105/- and Rs.130/- per day respectively. Since the date of appointment and till the date of termination of his services Petitioner worked continuously without any break and completed more than 240 days in a calendar year. He requested to issue written letter of appointment and to pay correct wages. He was assured of it but nothing has been done practically. Second Respondent used to extract work from 10 AM to 11 PM without any break. Petitioner requested to regularize his services and to pay correct wages but in vain. He approached his union who in turn raised a dispute under Sec.2k for regularization before the Conciliation Officer, Assistant Labour Commissioner (C) who fixed the hearing date as 14.10.2005 through their letter dated 23.9.2005 and invited the Respondents to attend the hearing. There on second Respondent orally terminated the services of the Petitioner from October, 2005 without following any provision of law much less Sec.25F of Industrial Disputes Act, 1947. While in service Petitioner was made payment by the Respondent through vouchers showing the wrong reasons in the column "towards". While working under the 2<sup>nd</sup> Respondent Petitioner addressed a letter to the Asst. General Manager, Region-II. While forwarding the said application 2<sup>nd</sup> Respondent recommended the case of the Petitioner vide their letter No.64 dated 31.5.99. While so, he admitted that Petitioner has been working from October, 1989. The Asst. General Manager vide their letter dated 11.8.1999 addressed to the 2<sup>nd</sup> Respondent informed that there are some orders for appointment on consolidate wage or scale wage but he might have not seen or ignored the fact that Petitioner is a registered candidate of the Employment Exchange. Through their letter dated 1.3.2000, second Respondent

addressed to the Chief Manager, Personnel Department, reminded to sanction the post of additional part-time sweeper. In his letter dated 13.2.2002 to which a copy of application of the Petitioner was enclosed also the 2<sup>nd</sup> Respondent has clearly mentioned that Petitioner has been working at their branch as casual Peon since October, 1989. In spite of it without any valid reason 2<sup>nd</sup> Respondent orally terminated the services of the Petitioner without following any provisions of Labour Laws much less Sec.25F of the Industrial Disputes Act, 1947. It is the legal position that casual labours are covered by the definition of workman under Sec.2(s) of the Industrial Disputes Act, 1947. Since his termination of services is illegal and inoperative Petitioner is entitled for reinstatement into service. A strong protest has been made by the Petitioner's union to the Respondent vide their demand notice dated 4.10.2005. Hence, the petition.

**3. Respondents filed their counter with the averments in brief as follows:**

A. P. Industrial Employee Union does not have any locus stand to file this case on behalf of the Petitioner, as it is neither an association recognized by the Bank nor having the employees of the bank as members. Further Petitioner is not a workman as per Industrial Disputes Act, 1947. He is not an employee of the bank. As such, petition is liable to be dismissed. further as per the verdict of the Hon'ble Supreme Court of India in the case of Secretary, State of Karnataka and others (Vs) Umadevi and three others, reported in at (2006) 4 SCC page, casual labour/temporary employee do not have any right to regular or permanent public employment as they accepted the employment fully knowing the nature of their employment at their own violation and with eyes open as to the nature of their illegal employment, which is not as per constitutional provisions and the appointment is not as per due process of selection as envisaged by the relevant rules and also held that the courts should not perpetuate illegalities, irregularities or improprieties. Thus, the petition under Section 2A(2) of Industrial Disputes Act, 1947 is not maintainable in law or on facts. The contention of the Petitioner that he was employed on casual basis since 1989 by the 2<sup>nd</sup> Respondent and 2<sup>nd</sup> Respondent was making payment of Rs.50/- per day though the casual labours working in the other branches are being paid more wages, that Petitioner was working continuously without any break and completed 240 days in a calendar year, that he made request for written letter of appointment and for correct wages and was assured of the same and was not granted the same, that 2<sup>nd</sup> Respondent extracted the work from 10AM to 11 PM without giving any break are all incorrect. Petitioner never worked for 240 days in a calendar year and he was never employed in the year 1989 nor terminated on 10.10.2005. Petitioner has not established the manner and mode in which he obtained

various documents filed by him and hence, the said documents can not be relied upon. Question of termination does not arise, as he was not employee of the bank. Provisions of Industrial Disputes Act, 1947 are not applicable to him. Even if the letters dated 31.5.99, 1.3.2000 and 13.2.2002 are admitted to be written by 2<sup>nd</sup> Respondent along with the enclosures which are recommendary in nature, as per the Hon'ble Supreme Court's verdict, 2<sup>nd</sup> Respondent's Branch Manager is not entitled to engage the Petitioner and the Petitioner's appointment is illegal. Therefore, can not be absorbed. Petitioner was engaged by Mallepally Branch on daily wage basis as and when work arose, in the branch due to various reasons. At his personal request Petitioner was engaged by the Branch Manager when he offered his services for that day. He was paid as per the norms and understanding of the work done. He was never engaged on regular basis. He was never appointed in any regular vacancy by the bank. He was engaged to do the work which is casual in nature and which arise intermittently. For doing regular work bank recruits staff by complying with the provisions stipulated after taking into account the guidelines issued by the Government of India from time to time in accordance with constitutional provisions. As such, employment itself is illegal. Therefore, the reinstatement into service can not be claimed that too with full back wages and attendant benefits with continuity of service and also interest. Government of India, Ministry of Finance, Department of Economic Affairs (Banking Division) had issued circular dated 6.8.1990 directing the recruitment of temporary employees in the clerical/subordinate cadre shall be stopped forthwith. For the staff which was then on the rolls of the banks, they shall be regularized as provided in the approach paper in terms of the circular issued at that time. These are all specific directions of Banks to make temporary appointment till the problem of existing temporary employees is fully resolved and for future requirements, Banks would have to approach Government and would have go by such modalities as would be laid down by the Government through regular process of recruitment enshrined in the constitution. Engagement of Petitioner is illegal because such appointments on casual basis were obtained by the Petitioner without following the procedure of their names being forwarded by the Employment Exchange, without following the rule of reservation and the procedure for appointment of employees in the subordinate cadre as prescribed by the rules of the Respondent bank. Further, as per the verdict of Hon'ble Supreme Court the candidates lack any eligibility of qualification in any manner it would not possible to consider for regularization as casual labours and that long duration of service would also not be relevant condition to regularize the service. Appointment against non-existent vacancy is also not maintainable and such person is not

entitled for regularization. In this case there was no vacancy in the regular basis but the Petitioner was engaged on daily wages basis to meet the exigencies. Even such employment can not be regularized unless regularized through prescribed procedure. Daily wage labourers whose services were engaged on the basis of need of work, such termination does not constitute as retrenchment. Such termination is not arbitrary as they are need based. It is well settled principle that an appointment made in violation of mandatory provisions constituted and non-possession of minimum educational or technical qualifications and other essential qualifications etc., would be wholly illegal. Those who come by back door should go through the door. Since Petitioner has been engaged to meet the exigencies only he is not a workman and he is not entitled for equal emoluments or equal pay to that of regular employees. Regularization can not be claimed as a matter of right, specially when it is illegal appointment. Petition is liable to be dismissed with exemplary costs.

4. To substantiate the contentions of the Petitioner WW1 was examined and Ex.W1 to W6 were marked. Ex.W1 to W3 are the internal correspondence of respondents. Ex.W4 is the letter dated 13.2.2002 addressed by the Branch Manager of Mallepally Branch of Respondent bank to the Asst. General Manager forwarding the application of the Petitioner for his absorption in bank's services. In this letter the Branch Manager has categorically mentioned that Petitioner has been working at the Mallepally branch as casual peon since October 1989 and also stated that he is hard working, honest and sincere in his duties and belongs to a poor SC family and therefore, they recommend to absorb the Petitioner in bank's service as Water Boy cum Lunch Room Attender. Ex.W5 is the minutes of conciliation proceedings and Ex.W6 is the report of failure of conciliation. On behalf of the management MW1 was examined. No documentary evidence has been produced by the management.

5. Heard the arguments of the either party. Written arguments were also filed by the Petitioner and the same are received and considered.

6. The Point that arise for determination is :

Whether the Petitioner is workman and whether termination of his services is legal and justified? If so, to what relief the Petitioner is entitled?

7. Point:

As far as the present dispute is concerned, Ex.W1 and W4 are relevant and Ex.W2 and W3 are not much relevant. Through Ex.W1 and W4 coupled with his own oral evidence as WW1, Petitioner could establish before this court that he has been working as casual labour with the Respondent bank since October 1989.

Sri Mohd. Easa Shareef, Chief Manager of the Respondent bank who has been examined as MW1 could not deny regarding the correspondence i.e., Ex.W1 and W4 when they were confronted to him. Thus, it can safely be taken that Petitioner has worked with the Respondent bank since October, 1989 as casual labour and therefore, he is a workman for all purposes. Contra contentions of the Respondent are not acceptable.

8. As can be gathered from the material on record, Petitioner who applied for his absorption in bank's regular service by making applications time and again and whose case has been recommended by the then Branch Manager, as can be gathered from Ex.W1 and W4, has raised an industrial dispute seeking for regularization of his service with the Respondent bank by approaching Assistant Labour Commissioner (C). Assistant Labour Commissioner (C) has made efforts to conciliate the matter. Ex.W5 indicates the same. Evidently such conciliation proceedings failed. While things stood so, instead of regularising the Petitioner's services, the Respondent bank has chosen to remove him from service abruptly w.e.f. 10.10.2005. There on Petitioner is constrained to approach this forum by filing this dispute seeking for his reinstatement into service.

9. Evidently, and admittedly there is no compliance of Sec. 25F of Industrial Disputes Act, 1947, while removing the Petitioner from service.

10. It is the contention of the Respondent that since the Petitioner is not a workman and Industrial Disputes Act, 1947 does not apply to him, there was no compliance of Sec. 25F of Industrial Disputes Act, 1947.

11. As already observed above, the material on record clearly discloses that Petitioner has been in continuous service as casual labour with the Respondent since October, 1989 and thus he is a workman. Thus, the provisions of Industrial Disputes Act, 1947 will apply. Therefore, his retrenchment/removal from service without complying with Sec. 25F of the Industrial Disputes Act, 1947 is certainly illegal, unjust and arbitrary.

12. It is the contention of the Respondent that the principles laid down in the cases of Official Liquidator Vs. Dayanand and others (2008) 10 SCC page 1 whereunder principles laid down in the case of Umadevi Vs. State of Karnataka (2006) 4 SCC page 1 has been upheld, are applicable to the present case and that Petitioner is not entitled for the relief sought for.

13. In the above cited cases Hon'ble Supreme Court has considered the acceptable mode of public employment and non acceptable regularization of services of the persons who entered into the service by back door methods, thereby defeating the opportunity of the general public to compete for appointment to the said post etc.. Present dispute is an industrial dispute. Industrial Law

is totally different from Civil Law/ Administrative Law. Regularization of casual workman as regular workman etc., are all governed by the industrial laws, rules and various circulars issued by the government from time to time touching this aspects. Public employment under Civil /Administrative Law is totally different.

14. Further more, in this case Petitioner is not seeking for regularization of his service. What all he is questioning is the correctness of abrupt termination of his services when he questioned the inaction on the part of the Respondent bank regarding his plea for regularization of his services, that too without complying with the Sec.25F of the Industrial Disputes Act, 1947.

15. In spite of their own admission in their counter that "Government of India, Ministry of Finance, Department of Economic Affairs (Banking Division) had issued a circular No.F-3/3/104/87-IR dated 6.8.1990 directing that all recruitment of temporary employees in the clerical/subordinate cadre shall be stopped forth with and that for the staff which was then on the rolls of the Banks, they shall be regularized as provided in the approach paper in terms of the circular issued at that time.", the Respondent bank, evidently failed to take appropriate action in connection with the claims of the Petitioner.

16. Anyway the question whether Petitioner is entitled for regularization of services or not is not the subject matter in this petition. Even if the same is subject matter in this petition, since it is an industrial dispute, the principles laid down in the above cited cases are not applicable.

17. For all the above referred reasons, the principles laid down in the above cited cases relied upon by the Learned Counsel for the bank are not helpful to his contentions in this case.

18. There are umpteen number of legal precedents laid down by the Apex Court whereunder it is clearly laid down that the workman who is removed from service without complying with the mandatory conditions laid down in Sec.25F of the Industrial Disputes Act, 1947 is to be ordered to be reinstated into service. Thus, the Petitioner who is found to be a workman is entitled to be reinstated into service of the bank w.e.f. 10.10.2005 with the benefit of continuous service. As far as back wages are concerned, since he did not render his service to the bank but not due to his own fault, he is entitled for atleast 50% of the back wages which he would have earned but for his removal from service.

This point is answered accordingly.

#### **Result:**

In the result, petition is allowed. Petitioner shall be reinstated into service of the Respondent bank as casual



labour w.e.f. 10.10.2005 with continuity of service. He shall be paid 50% of the back wages also, forth with.

Award passed accordingly. Transmit.

M. VIJAYA LAKSHMI, Presiding Officer

### Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
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WW1: Sri K. Rameshwar	MW1: Sri Mohd. Easa Shareef
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### Documents marked for the Petitioner

Ex.W1: Photostat copy of the Ir. No.64 dt. 31.5.1999 to the Asst. General Manager by Branch Manager, Malleshpally

Ex.W2: Photostat copy of the Ir.No.AGM/R.II/Staff/Gr.I/ 65 dt. 11.8.1999 to the Chief Manager, Malleshpally by the AGM

Ex.W3: Photostat copy of the Ir. dt. 1.3.2000 to the Chief Manager, H.O. Hyderabad, by the Branch Manager, Malleshpally

Ex.W4: Photostat copy of the Ir. No.950 dt. 13.2.2002 to the Asst. General Manager by Branch Manager, Malleshpally

Ex.W5: Minutes of conciliation proceedings dt. 29.12.2005

Ex.W6: Failure of conciliation proceedings Ir No.7(19)/ 2005-E2 dt. 24.1.2006

### Documents marked for the Respondent

NIL

नई दिल्ली, 25 सितम्बर, 2014

**का.आ. 2657.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मध्य रेलवे, के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, मुंबई के पंचाट (संदर्भ सं. 49/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 22.09.2014 को प्राप्त हुआ था।

[सं. एल-41011/08/2005-आईआर (बी-1)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 25th September, 2014

**S.O. 2657.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 49/2007) of the Cent. Govt. Indus. Tribunal-cum-Labour

Court No. 2, Mumbai now as shown in the Annexure, in the Industrial Dispute between the management of the Central Railway, and their workmen, received by the Central Government on 22.09.2014.

[No. L-41011/08/2005-IR (B-I)]

SUMATI SAKLANI, Section Officer

### ANNEXURE

### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.2, MUMBAI

PRESENT: K.B. KATAKE, Presiding Officer

REFERENCE NO.CGIT-2/49 of 2007

EMPLOYERS IN RELATION TO THE  
MANAGEMENT OF  
CENTRAL RAILWAY

The Senior Divisional Electrical Engineer (G)  
Central Railway, Mumbai Division  
Mumbai CST  
Mumbai 400 001

AND

THEIR WORKMEN

The Secretary  
Central Railway AC Coach (Escorting & Maintenance)  
Staff Association  
Central Railway  
Mumbai CST  
Mumbai 400 001

### APPEARANCES:

FOR THE EMPLOYER : Mr. Abhay Kulkarni, Advocate

FOR THE WORKMEN : Mr. J. H. Sawant Advocate

Mumbai, dated the 12<sup>th</sup> August, 2014

### AWARD

The Government of India, Ministry of Labour & Employment by its Order No.L-41011 / 8 /2005-IR (B-I), dated 04.10.2007 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2 (A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following industrial dispute to this Tribunal for adjudication:

“Whether the demands of the union (i) for the provision of proper place to rest for the escorting staff (ACCM/ACCA) in the long distance train (ii) for upgradation of ACCM-I/II to the post of MCM at par with other technical/non-technical staff i.e. ACCMs are justified? If so, to what relief the union/workmen concerned are entitled to?”

2. After receipt of the reference, notices were issued to both the parties. In response to the notice, second party union has filed its statement of claim at Ex-4. According to the second party they are Central Railway A/C Coach (Escorting and Maintenance) Staffs employed by the management. Their demand is; as they are required to travel in a long distance trains and to attend their duties in the respective trains continuously for more than 48 hours one side, the journey time is more than 100 hours, they require suitable place for their rest preferably one berth each in all the trains. It is essential in order to maintain good health, efficiency and safety.

3. Their second demand is for upgradation of ACCM-I / II to the post of MCM at par with other technical/non-technical staff of Railways. The workmen in the category of Technician in the grade-I are also highly skilled artisan in the pay scale of Rs.4500-7000. The workmen in the category of ACCM-I though having other things equal are not given promotion to the post of MCM and they are thus subjected to discrimination. Therefore they pray that the promotional avenue must be made available to ACCM-I.

4. Their third demand is for fixation and payment of washing allowance to the escorting staff i.e. ACCMs. Though the first party has principally agreed to make such payment of washing allowance to the second party, it has not been yet paid to them. The second party prays that the said washing allowance be paid to them with retrospective effect. Accordingly they pray for award in respect of these three demands.

5. The first party resisted the statement of claim vide their written statement at Ex-6. According to them the demands made in the reference does not come in the ambit of industrial dispute. They are pertaining to the exclusive administrative functions and the policy decisions of the management and are outside the scope and jurisdiction of Court. They further contended that there are only two recognised unions functioning at present. They are NRMU and CRMS affiliated to All India Railwaymen's Federation and National Federation. They are only authorised to take up any issue with the management. The second party is neither recognised union nor affiliated to any recognised union and they have no locus standi to raise this dispute.

6. In respect of the demands the first party says that, one wooden berth of 6 feet by 2 feet in size is provided in each A/c coaches on the side of doorways for the staff of ACCA/ACCM on duty. The said berth is sufficient for two persons to take rest as, as per the duty list A/C Coach Attendants are required to watch passengers boarding, alighting on each station. They are required to check boarding of unauthorised person and required to keep awake during duty period including at night. Their duty is different than the duty of ticket checker and RPF Staff.

Therefore it is not possible to provide berth to A/C staff in sleeper class as provided to RPF Staff and Ticket Checking Staff. Furthermore it is a matter of exclusive administrative functions of the management. The demand of the second party is not legal, proper and justified.

7. In respect of promotion the management says that ACCM grade-I are eligible for promotion to the post of J.E.- II which is a selection post and thereafter J.E.-II, SE and SSE are selected as per the rules and in this cadre there are only two grades i.e. ACCM-I and ACCM-II and there are no further channel of promotion for the post of MCM. While filling up vacancies of J.E.-II against departmental quota, an integrated seniority is prepared from all Technicians-I in GR, FTR-I, ACCM-I, Carpenter, Ref.Mech-I and DCM-I etc. It shows that ACCM-I is also called for promotion of J.E.-II and the allegation of the union thus is not true that there is no channel of further promotion to ACCM-I.

8. In respect of the third demand, first party submitted that as per rules only group 'D' Staff are eligible for washing allowance. Therefore ACCMs are not eligible for washing allowance. ACCA are entitled for the same as provided under Railway Board's letter dated 6/1/2000 by which rule was amended. According to the management proposal for providing washing allowance to ACCMs is forwarded to Railway Board and the same is under consideration. The Board will take appropriate decision in this respect as per its policy. Introducing introduction of new allowance against the Board's policy is not within the frame work of Industrial Disputes Act. In the circumstance management prays that the reference be rejected with cost.

9. Following are the issues for my determination. I record my findings thereon for the reasons to follow.

Sr. no.	Issues	Findings
1.	Whether the workmen under reference are entitled for separate berth for each of them as a rest place as prayed for?	Yes.
2.	Whether avenue of promotion to the post of Master Craftsman is required to be kept open for ACCM-I as prayed for?	Yes.
3.	Whether the workmen under reference are entitled to the washing allowance with retrospective effect as prayed for?	Yes.
4.	What order?	As per final order.

## REASONS

## Issue No.1 :-

10. In this respect it is contended on behalf of the management that the demands of these workmen are purely of administrative nature and required to be decided by the management. Therefore Tribunal has no jurisdiction to look into the various demands raised by the union. In this respect I would like to point out that entire functioning of the Railways is as per the Rules, Regulations and the administrative decisions taken by the management. This Tribunal can very well examine the justness of the decision taken by the management. Therefore the statement of the management does not stand to reasons.

11. In respect of the demand of separate berth, it is submitted on behalf of the first party that, one wooden berth is provided in each compartment and looking into the duties of these workmen, that suffice the purpose. As against this the union claims that the said wooden berth is being used for keeping the bed rolls. According to the management out of the two attendants, one has to be always vigilant to inspect the movement of passengers boarding and alighting on each station. In the circumstances in addition to the wooden berth which is required to be used for keeping bed rolls, one more berth should be made available to these attendants. So that atleast one of the attendants can take rest and the other can keep watch on the movements of the passengers on each station. In short, one additional berth should be provided to the attendant, so that each of them can take rest alternatively. Accordingly I decide this issue No.1 in the affirmative.

## Issue No.2 &amp; 3:-

12. In respect of promotion and washing allowance, the first party management has contended that they have proposed the promotions and the washing allowances as demanded by the union. It is also contended that the matter is under consideration of the management. While making proposal, it is clear that the concerned authority must have considered the justness of making available avenue of promotions to these workmen as well as the justness of their demand of washing allowance. In this back drop I found that first party is opposing the demand of the workmen in this reference merely for the sake of resisting the claim of the workmen. On the other hand from their version, it is clear that the management is also principally of the opinion that these facilities are the need of the time and should be given to these workmen. In the circumstances I have no hesitation to allow both these demands of the workmen. In respect of washing allowance the workmen are claiming it with retrospective effect. In this respect I would like to direct the management to consider their demand sympathetically. If the management do not think it proper

to pay the washing allowance with retrospective effect, they should pay it atleast from the date of this reference. Accordingly I allow the reference and proceed to pass the following order:

## ORDER

- (i) The reference is allowed as follows with no order as to cost.
- (ii) The first party is directed to give one additional berth to these attendants in each compartment.
- (iii) The first party is also directed to comply with the demand of the workmen for promotion to the post of Master Craftsman.
- (iv) The first party is also directed to pay the washing allowance to these workmen retrospectively or atleast from the date of this reference.

Date: 12/08/2014

K. B. KATAKE, Presiding Officer

नई दिल्ली, 25 सितम्बर, 2014

**का.आ. 2658.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार दक्षिण मध्य रेलवे, के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय हैदराबाद, के पंचाट (संदर्भ सं. 17/2008) को प्रकाशित करती है, जो केन्द्रीय सरकार को 02.09.2014 को प्राप्त हुआ था।

[सं. एल-12025/01/2014-आईआर (बी-1)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 25th September, 2014

**S.O. 2658.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 17/2008) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Hyderabad now as shown in the Annexure, in the Industrial Dispute between the management of the South Central Railways, and their workmen, received by the Central Government on 02.09.2014.

[No. L-12025/01/2014-IR (B-I)]

SUMATI SAKLANI, Section Officer

## ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT  
INDUSTRIAL TRIBUNAL-CUM-LABOUR  
COURT AT HYDERABAD**

**Present:** Smt. M. Vijaya Lakshmi, Presiding Officer

Dated the 10<sup>th</sup> day of February, 2014

**INDUSTRIAL DISPUTE No. 17/2008**

(LC No.55/2008 clubbed in ID No.17/2008)

**Between:**

Smt. Faheem Bee,  
W/o Late Gulam Dastigar,  
R/o H.No.12-1-1065/2, North Lalguda,  
Secunderabad – 500 107. ...Petitioner

AND

1. The General Manager,  
South Central Railways,  
Secunderabad.
2. The Chief Personal Officer,  
South Central Railways  
Secunderabad.
3. The Divisional Personal Officer,  
Sanchalan Bhawan,  
South Central Railways  
Secunderabad.
4. Senior Divisional Electrical Engineer,  
South Central Railways,  
Lalguda, Hyderabad. ...Respondents

**Appearances:**

For the Petitioner : Sri Md. Yousufuddin, Advocate

For the Respondent : Sri A. Prithviraj, Advocate

**COMMON AWARD**

The Government of India made a reference vide order No.L-41012/24/2008-IR(B-I) dated 23.6.2008 requiring this forum to resolve the industrial dispute arose in this case by giving an award into the question,

“Whether the action of the Management of South Central Railway, Secunderabad in terminating the services of Smt. Faheem Bee, Casual Labour without following Section 25F of the ID Act, is legal and justified? If not, what relief the workman/ Petitioner is entitled to?”

After receiving the reference this Tribunal has issued notice to either parties They both appeared before the court and engaged their respective counsels with the leave of the court and consent of either party.

2. Petitioner filed LC 55/2008 under Sec.2A(2) of the Industrial Disputes Act, 1947 seeking for her reinstatement into service as cleaner in Staff Canteen Electric Loco Shed, Secunderabad, with full back wages and all attendant benefits to which she is entitled due to her long service from 1997 to 20.7.2006.

3. While so, Petitioner filed a memo seeking for clubbing LC 55/2008 with I.D. No. 17/2008 and the same has been accepted by this forum. Proceedings of both the cases are conducted in ID No.17/2008. Petitioner

adopted the petition filed by her in LC 55/2008 as her claim statement in I.D.No. 17/2008.

4. The averments made in the claim statement in brief are as follows:

Petitioner has been working as cleaner in the Electrical Loco Shed Canteen, Lalguda, South Central Railways, Secunderabad Drawing a wage of Rs.50/- per day. Her services were terminated by 4<sup>th</sup> Respondent on 20.7.2006. She gave a notice on 3.8.2006 through proper channel seeking for re-consideration of the order. Respondent refused to reconsider the same and to take her back into service and also to allow her the service benefits. She approached Assistant Labour Commissioner (Central) on 3.10.2006. He held several meetings to settle the matter. But in vain. The representatives of the Respondent refused to take her back finally on 12.3.2007, on the ground that rules do not permit the Respondents to reconsider their decision. Petitioner was in employment of the Respondents from the year 1997. She worked continuously from 1997 and has been removed from service on 20.7.2006 by an order of 4<sup>th</sup> Respondent dated 13.7.2006. Petitioner was not paid the minimum rates of wages fixed for the canteen workers by the Government of Andhra Pradesh. Out of 10 workers available in the canteen only 8 used to work. Petitioner was attending to cleaning work for all the period of employment of 9 years under the canteen Management. She was not issued any notice before termination of her services and she was not paid wages towards the notice period. Despite of her 9 years of service no compensation was paid as required under Sec.25F of Industrial Disputes Act, 1947, though it is mandatory under law and as per legal precedents governing the same. Hon'ble Supreme Court of India in Canteen matters under original jurisdiction in writ petitions (C) No.2275-86 of 1987 examined entire circumstances of workers engaged in canteens and held in paragraph 31 that, “ The result, therefore, is that the workers engaged in the statutory canteens as well as those engaged in non-statutory recognized canteens in the Railway Establishments are Railway Employees and they are entitled to be treated as such. The Railway Board has already treated the employees of all statutory and eleven Delhi based non-statutory recognized canteens as railway employees w.e.f. October 22, 1980. The employees of the other non-statutory recognized canteens will, however, be treated as railway employees w.e.f. April 1, 1990. They would, therefore, be entitled to all benefits as such Railway Employees with effect from the said date, according to the service conditions prescribed for them under the relevant rules/orders”. This being the position of the workman removal of Petitioner is illegal and uncalled for. All her efforts to seek alternate employment are failed. She is to support two children without any means whatsoever. Hence, the petition.



5. Respondents filed their counter with the averments in brief as follows:

At the outset, Respondents deny that Petitioner was an employee of the Railway and that she was removed after more than 9 years of service. She was neither appointed nor engaged by the competent authority to do any work in any capacity in the canteen. She is not a workman within the meaning of Industrial Disputes Act, 1947. Hence, provisions of the said act are not applicable to her case and therefore this case is not maintainable and is liable to be dismissed in limini. Her contention that she worked in the canteen on daily wages of Rs.40/- per day is not correct. The Canteen Electric Loco Shed, Lalaguda under the control of Respondent No.4, is a non-statutory canteen managed by a committee formed with the representatives of staff and supervised by a Manager to facilitate employees to avail tea/coffee/snacks/ lunch during designated break hours. Just because there is an observation in the inspection note of Sri R.P. Prajapathi, the then Division Electrical Engineer of Electric Loco Shed, Lalaguda that one lady casual labour worker is also kept in the canteen on Rs.40/- daily wages, is not a conclusive proof that Petitioner was engaged as casual labour by the competent authority on behalf of South Central Railway administration. She is trying to take undue advantage of the said report. She has not produced any documentary evidence to prove that she was engaged as casual labour by railway administration. As per the rules in vogue, a casual labour can be engaged only on personal approval of the General Manager. There is no such approval in case of the Petitioner. Any authority lower than the General Manager is not competent to engage casual labourer. As per rules all casual labour are provided with casual labour cards wherein their service particulars are entered. No such card is produced by the Petitioner. Thus, she was never engaged as casual labour. There is no employee and employer relation between the Petitioner and the Respondents. Thus, the question of termination of the services, issuance of notice before termination or payment of compensation does not arise at all and the ruling of Hon'ble Supreme Court of India is not applicable to the facts of the case. The enquiries have revealed that Petitioner used to come near by the canteen asking for left over food and pleading for mercy. Solely on humanitarian grounds she was provided with left over food without extracting any work. The Petitioner's name is not reflected in any of the records maintained by the railway pertaining to appointment, attendance etc.. No appointment of casual labour took place either in the canteen or elsewhere in the Electric Loco Shed since its' inception. The industrial dispute is liable to be dismissed with exemplary costs.

6. To substantiate the contentions of the Petitioner, WW1 to WW3 were examined and Ex.W1 to W6 were marked. On behalf of the Respondents MW1 was examined and Ex.M1 to M36 were marked.

7. Heard either party.

8. The points that arise for determination are:

I. Whether Petitioner is a workman?

II. Whether the Petitioner is entitled for reinstatement into service of the Respondents and other attendant benefits as claimed by her?

9. Point No.I:

As can be gathered from the oral evidence as well as documentary evidence adduced on record, one can reasonably understand that Petitioner has worked in staff canteen, Electric Loco Shed, South Central Railways, Lalaguda, Secunderabad, attending to cleaning and such other works there. It is her claim that she has been a casual labourer receiving daily wages while working in the said canteen. Whereas it is the claim of the Respondent Management that she was never a casual labour receiving any wages from the Respondent and that she requested for the left over food and taking pity on her she was allowed to take left over food from the canteen only. From this, what one can understand is that it is the claim of the Respondents that receiving left over food in the canteen only Petitioner has been working as cleaner in the said staff canteen.

10. But, the material on record discloses that to the knowledge of the Respondent one Sri R.P. Prajapathi, Chairman of the Electric Loco Shed canteen has inspected the said staff canteen and gave his report on 11.10.2001 and in the said report he observed that "One lady casual labour worker is also kept in the Canteen on Rs.40/- on daily wages. There is no any approval obtained from the Chairman to keep a daily worker. In view of the 10 staff available already in the canteen the requirement of casual labour should be reviewed. Approval of the Competent Authority to be obtained by the Manager. Also no approval has been taken to arrange the payment to the casual worker. It is also complained from the casual worker that she is not paid regularly and correctly." Thus, it is very much clear that Petitioner has been working as a casual labour on daily wages of Rs.40/- but without having any regular appointment and also without the wages being paid regularly and correctly. This is a lapse found out while inspecting the Staff Canteen.

11. Soon after, the above referred report, copy of which is marked as Ex.W5, was made, unceremoniously, Petitioner has been asked not to continue with the work. Aggrieved by the same she made repeated representations to the Railway authorities seeking for her reinstatement into service. Ex.W1 to W4 and W6 are copies of said representations.

12. It is the claim of the Petitioner all along that since 1996 and upto July, 2006 she worked in Staff Canteen as cleaner on daily wages. The oral evidence adduced by

the Petitioner as WW1 and the evidence of WW2 and WW3 is to the effect that Petitioner has been continuously working in the Staff Canteen all these years. Ex.W5 also rendered support to the said contention only, though not actually giving out the period of work done by the Petitioner. It can be said so since, it is not the averment in Ex.W5 that anybody reported to the Inspecting Officer that the daily wage worker has been working during recent period prior to the date of inspection only or any such thing. Further, the said report discloses that the worker herself has complained that she was not being paid wages regularly, which means, since considerable period she has been working there. MW1, the only witness who was examined for the Management has also admitted regarding Ex.W5 report.

13. No doubt, there is no formal appointment of the Petitioner as casual employee following the required procedure. But the fact remains that she worked as casual worker in the Staff Canteen of Railway Loco Shed, Lalaguda, Secunderabad for considerable period which will certainly be more than 240 days continuously. Thus, she is a workman for all purposes.

14. Petitioner's services were terminated without following the procedure laid down by the provisions of Industrial Disputes Act, 1947. Therefore, she is entitled for the remedies available under law. In usual course of the matter, she is to be ordered, to be reinstated into service. But the material on record including Ex.W5 clearly indicate that without following the rules laid down for the appointment of casual workers without required permission/authorisation from the authorities who alone can give such permission/authorisation like, the General Manager, the Petitioner was allowed to work as casual worker. Even for paying wages to her, required authorisation has not been taken. That is the lapse which was pointed out during the inspection made by Sri R.P. Prajapathi in Ex.W5 report. Such irregularities and unrealistic actions can not be allowed to be perpetuated by ordering for reinstatement of Petitioner into service.

15. But Petitioner shall be provided with appropriate compensation, for allowing her to believe that she was having continuous employment with the Railway Canteen and therefore lulled into false security. Evidently thereby she has not searched for any other means of livelihood which resulted into substantial injury and prejudice to her interest. The same is to be reasonably compensated.

16. If, a workman is retrenched he will be entitled for one month's notice and also compensation @ one month's pay for each year of his/her service. In the present case if such amount is to be calculated, taking the service of the Petitioner as from 1996 to 2006, it comes to Rs.13,200/- (one month's pay=Rs.1200/- plus Pay of one month per year i.e. @ Rs.1200/- x 10 months = Rs.12,000/-). Considering the fact that Petitioner is fighting this

litigation since the year 2008, this amount is to be rounded off to Rs. 15,000/- and the same is to be ordered to be paid towards compensation for abrupt removal of the Petitioner from the service as casual worker. Petitioner is entitled for this relief only.

This point is answered accordingly.

Result:

In the result, reference is answered as follows:

The Act of the Management of South Central Railways, Secunderabad in terminating the services of Smt. Fahim Bee, casual worker without following Sec.25F of Industrial Disputes Act, 1947 is not justified. Petitioner is entitled for a compensation of Rs.15,000/- from Respondent. The said amount shall be paid to the Petitioner by the Respondent within one month from the date of publication of award. Failing which, Petitioner is entitled to claim the said amount together with 12% interest per annum, from the date of expiry of one month, from the date of publication of the award till realization.

Award passed accordingly. Transmit.

M. VIJAYA LAKSHMI, Presiding Officer

#### Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
WW1: Smt. Faheem Bee	MW1: Sri A. Hussain
WW2: Sri Shaik Ahmed Hussain	
WW3: Sri Mohd. Ali Pasha	

#### Documents marked for the Petitioner

Ex.W1:	Photostat copy of representation of WW1 to the Management
Ex.W2:	Photostat copy of representation of WW1 to the Management dt.3.8.06
Ex.W3:	Photostat copy of representation of WW1 to the Management dt.3.10.06
Ex.W4:	Photostat copy of representation of WW1 to the Management dt.12.3.07
Ex.W5:	Photostat copy of inspection report
Ex.W6:	Photostat copy of representation of WW1 to the Management dt.8.2.2005

#### Documents marked for the Respondent

Ex.M1:	Photostat copy of attendance register of Canteen employees for 1/2004
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Ex.M2: Photostat copy of attendance register of Canteen employees for 2/2004

Ex.M3: Photostat copy of attendance register of Canteen employees for 3/2004

Ex.M4: Photostat copy of attendance register of Canteen employees for 4/2004

Ex.M5: Photostat copy of attendance register of Canteen employees for 5/2004

Ex.M6: Photostat copy of attendance register of Canteen employees for 6/2004

Ex.M7: Photostat copy of attendance register of Canteen employees for 7/2004

Ex.M8: Photostat copy of attendance register of Canteen employees for 8/2004

Ex.M9: Photostat copy of attendance register of Canteen employees for 9/2004

Ex.M10: Photostat copy of attendance register of Canteen employees for 10/2004

Ex.M11: Photostat copy of attendance register of Canteen employees for 11/2004

Ex.M12: Photostat copy of attendance register of Canteen employees for 12/2004

Ex.M13: Photostat copy of attendance register of Canteen employees for 1/2005

Ex.M14: Photostat copy of attendance register of Canteen employees for 2/2005

Ex.M15: Photostat copy of attendance register of Canteen employees for 3/2005

Ex.M16: Photostat copy of attendance register of Canteen employees for 4/2005

Ex.M17: Photostat copy of attendance register of Canteen employees for 5/2005

Ex.M18: Photostat copy of attendance register of Canteen employees for 6/2005

Ex.M19: Photostat copy of attendance register of Canteen employees for 7/2005

Ex.M20: Photostat copy of attendance register of Canteen employees for 8/2005

Ex.M21: Photostat copy of attendance register of Canteen employees for 9/2005

Ex.M22: Photostat copy of attendance register of Canteen employees for 10/2005

Ex.M23: Photostat copy of attendance register of Canteen employees for 1/2005

Ex.M24: Photostat copy of attendance register of Canteen employees for 12/2005

Ex.M25: Photostat copy of attendance register of Canteen employees for 1/2006

Ex.M26: Photostat copy of attendance register of Canteen employees for 2/2006 Ex.M27: Photostat copy of attendance register of Canteen employees for 3/2006

Ex.M28: Photostat copy of attendance register of Canteen employees for 4/2006

Ex.M29: Photostat copy of attendance register of Canteen employees for 5/2006 Ex.M30: Photostat copy of attendance register of Canteen employees for 6/2006

Ex.M31: Photostat copy of attendance register of Canteen employees for 7/2006

Ex.M32: Photostat copy of attendance register of Canteen employees for 8/2006

Ex.M33: Photostat copy of attendance register of Canteen employees for 9/2006

Ex.M34: Photostat copy of attendance register of Canteen employees for 10/2006

Ex.M35: Photostat copy of attendance register of Canteen employees for 11/2006

Ex.M36: Photostat copy of attendance register of Canteen employees for 12/2006.

नई दिल्ली, 25 सितम्बर, 2014

**का.आ. 2659.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार डायरेक्टरेट ऑफ वीट रिसर्च के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1 चंडीगढ़ के पंचाट (संदर्भ सं. 11/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 22.09.2014 को प्राप्त हुआ था।

[ सं. एल-42012/160/1999-आईआर (डीयू) ]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 25th September, 2014

**S.O. 2659.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 11/2000) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 1, Chandigarh now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of the Directorate of Wheat Research, and their workmen, which was received by the Central Government on 22.09.2014.

[No. L-42012/160/1999-IR (DU)]

P. K. VENUGOPAL, Section Officer

**ANNEXURE****BEFORE SHRI SURENDRA PRAKASH SINGH,  
PRESIDING OFFICER, CENTRAL GOVT.  
INDUSTRIAL TRIBUNAL-CUM-LABOUR  
COURT-I, CHANDIGARH****Case No. ID 11 of 2000.** Reference No. L-42012/160/  
99-IR(DU) dated 16.12.1999.Sh. Rampal S/o Sh. Antu Ram, Village &  
P.O. Ucchana, Distt. Karnal-132001. ...Workman

Versus

1. The Director, Directorate of Wheat  
Research, Karnal-132001. ...Respondent**Appearances:**

For the Workman : Sh. R. P. Rana, Advocate

For the Management : Sh. R. K. Sharma & S. K.  
Gupta Advocates**AWARD**

Dated: 11.09.2014

Government of India Ministry of Labour vide notification L-42012/160/99/IR(DU) dated 16.12.1999 has referred the following dispute to this Tribunal for adjudication:

**Term of Reference:**

“Whether the action of the Management of Director, Wheat Research Karnal in terminating the services of Sh. Rampal w.e.f. 01.06.1990 is legal & justified? If not, to what relief he is entitled?”

2. The above noted reference was received on remand vide order dated 01.04.2014 passed by the Hon'ble Punjab and Haryana High Court in LPA No.1241 of 2013, by passing the following orders:-

“In view of the above, we allow this appeal. The orders under challenge passed by learned Single Judge and that of Labour Court are set aside. The matter is remitted to the Labour Court for fresh decision. The parties through their counsel are directed to appear before the Labour Court on 01.05.2014. It is also directed that the Labour Court will give two effective opportunities to both the parties to lead evidence and thereafter order be passed.

Needful shall be done within a period of nine months from the date of appearance of the parties before the Labour Court.”

3. After receipt of order of the Hon'ble High Court notices were issued to the parties. On request of the parties case was fixed for evidence. Both the parties produced their respective witnesses. Workman examined himself

as WW1 and cross examined by representative of the management. Management also filed affidavit of Anil Kumar son of Ramdass, working as Assistant Administrative officer was examined as MW1 and also cross examined by the learned representative of the workman.

4. The case of the workman is that he was engaged as casual worker on 01.07.1987 (as pleaded in the claim statement, while in affidavit of workman, the date is mentioned 01.09.1993) in the Regional Station, Indian Agriculture Research Institute Karnal through Employment Exchange and he worked continuously till 31.05.1990 as casual worker. On the transfer of the then director, new director joined and services of the workman were terminated w.e.f. 01.06.1990 illegally and arbitrarily without any notice or any compensation in violation of Section 25F of the I.D. Act, 1947. The work and conduct of the workman was satisfactory which is also evident from the certificate dated 29.05.1990. In this very certificate it is also certified that the workman worked w.e.f. September 1987 to 31.05.1990. The management also retained similarly situated casual worker namely Harjinder Kumar, Sukuram and Savitri and they were regularized in the year 1993. In this way the management also violated Section 25G of the I.D. Act, 1947. It is further submitted by the workman that in the year 1991 Barley Project was transferred to Director Wheat Research Institute, Karnal with all assets and liabilities and management adjusted the employees of Barley Project in the Wheat Research Institute namely Jaspal Singh. Staff Superintendent Rajinder Singh, Technical Assistant Sant Kumar, Technical Assistant, Guman Singh and Bhim Sain Peon, Mr. Raunak, Savitri, Harinder Kumar, Sukh Ram were also retained, who were working as Beldar on daily wages and their services were regularized in the year 1993.

5. The management also appointed Messengers namely Des Raj, Aman Kumar, Ramesh Kumar and Prem Partap in the year 1992 and their services were regularized in October, 1994. Besides this management also appointed Sanjay Bansal and Hawa Singh as Malis in May, 1995 and Mr. Ramesh Bali as Cook in 1995. Thus the management also violated Section 25H of the I.D. Act, 1947. It is submitted by the workman that he has completed more than 240 days of service before his termination on 01.06.1990 and the management may be directed to reinstate with all benefits and back wages.

6. The management filed reply. Preliminary objection has been taken that Wheat and Barley Project is not an industry, it is admitted by the management that the workman was engaged under the Barley Project run by IARI, Regional Station Indian Agriculture Research Institute Karnal which was disbanded and the workman in this project did not completed 240 days of service in any calendar year as casual labourer. The management



also attach statement of period during which the concerned workman worker under the Barley Project. The management pleaded that as the workman has not completed 240 days of service, therefore the management committed no violation of Section 25F of the I.D. Act, 1947. It is further pleaded by the workman that there was no work left, therefore workman was not engaged as casual labourer on the discontinuation of Barley Project. It is further pleaded by the management that the cases of Sh. Harinder Kumar, Sukhh Ram and Savitri Devi are different. They were regularised in 1993 through departmental promotion committee as they had completed the desire bench mark under the Barley Project prior to the workman. The work of the workman was purely contractual in nature which comes within the exception clause of Section 2(00) (bb) and the workman is not entitled to any relief and management prayed for the rejection of the claim petition along with the written statement management also filed certificate dated 31.05.1990.

7. The replication also filed by the workman reiterated claim in the claim statement.

8. Evidence of the parties recorded. Workman tendered his affidavit along with certificate dated 29.05.1990 as Ext.W2. In cross examination workman stated that he worked with the management up to 31.05.1990 on daily wages in Barley Project at Regional Station Karnal, and he also denied the suggestion that he has not completed 240 days in the preceding year from the date of his termination. Management in evidence tendered affidavit of Anil Kumar, working as Assistant Administrative Officer with Director of Wheat Research, Karnal who tendered document Ext.M2 letter dated 31.05.1990. In cross examination Sh. Anil Kumar stated that he has no record pertaining to the Indian Agriculture Research Institute, Karnal. Therefore he can't say whether workman worked from 01.09.1987 to 31.05.1990. He also can't exactly depose as to whether the detail mentioned in para three of his affidavit has been given on the basis of musteroll or attendance register he also stated that he does not know whether the record pertaining to payment to the workman, attendance sheet or musteroll and payment voucher from 01.09.1987 to 31.05.1990 are preserve or kept in Barley Project. He also stated that without seeing the record he cannot say whether the payment voucher for the period 01.09.1987 to 31.05.1990 are available in the office of Barley Project or not. He also stated that he was not sure whether this record is available in Wheat Research Institute.

9. Arguments of both the parties heard.

10. The management in its written statement pleaded that the Directorate of Wheat Research Karnal is the national agency for promoting and coordinating research in all areas of Wheat and Barley is a part of agriculture which is not an industry. Workmen submitted that

management is well within the definition of industry as defined in the ID Act 1947. Workman submitted that in Bangalore Water Supply and Sewerage Board Vs. A. Rajappa the Hon'ble Supreme Court has defined the nature of industry. The Bare fact that the management is conducting research cannot be exempted from the definition of the industry. The controversy whether a unit is an industry or not to be decided on the basis whether the work interested by the management to the workman and workman has discharge his duties. In the case in hand the management has not adduced any evidence which can preclude the management from the ambit of industry as defined in the Industrial Dispute Act 1947. Thus, in the above circumstances it is held that management in an industry.

11. So far the question whether workman worked for 240 days preceding to the date of termination i.e 1.6.1990 is concerned, management in its written statement admitted that workman is engaged in Barley Project and this Project was disbanded. It is further submitted by the management that even in the Barley Project did not complete 240 days of service with the management as casual labour. In written statement the management also submitted that on 1-9-1990 Barley Project transferred to wheat Research which is now called as Directorate of wheat Research Karnal and regular staff of Barley Project transferred to Wheat Research Project. Sh. Sukh Ram, Raunaq Ram, Harinder Kumar and Savitri were employed on regular basis in the year 1993. The management along with its reply also filed photocopy of documents dated 31.5.90 (Ex.M2) which relates to the working of the workman in Barley Project. This document is signed by Sh. Mahabal Ram Project Coordinator (Barley). Sh. Mahabal Ram Project Coordinator Barley issued a certificate certifying that the workman worked at the project as casual labour upto 31<sup>st</sup> May 1990. This document also certified that workman is a hard working , discipline and honest man. Workman in evidence also filed a certificate issued by Mahabal Ram Project Coordinator Barley.(Ex.W2) in which Sh. Mahabal Ram mentioned above certified that the workman has worked at Barley Project as casual labour from September 1987 to 31<sup>st</sup> May 1990 on Rs. 31.75p per day fixed and he has hard working, sincere, good disciplined and honest man and bears good moral character.

12. Workman in his affidavit and also in oral examination mentioned that he was continuously working from 1987 to 1990 in Barley Project. Workman denied the suggestion in cross examination that he has not completed 240 days in the preceding year before termination of his services. In his affidavit workman clearly mentioned that he was engaged as casual worker on 1.9.87 and worked till 31<sup>st</sup> May 1990 and his services were terminated w.e.f. 1.6.90 illegally and arbitrarily without issuing one month notice or any compensation in lieu of notice . Management's witness Sh. Anil Kumar

in his cross examination stated that he has no record pertaining to the Indian Agriculture Research Institute Karnal, therefore, he cannot say whether workman worked from 1.9.87 to 31.5.90. This witness also stated that he can not exactly depose whether the detail mentioned in Para 3 of his affidavit has been given on the basis of muster roll or attendance register. He also stated in his cross examination that he does not know whether record pertaining to payment to the workman, attendance sheet or muster roll and payment voucher from 1..9.87 to 31.5.90 are preserved or kept in Barley Project or not. This witness also stated that without seeing the record he cannot say whether payment vouchers for the period 1.9.87 to 31.5.90 are available in the office of Barley Project or not.

13. In the light of the above situation, it is pertinent to mentioned here that workman moved an application dated 8.7.2003 before this Tribunal for production of original attendance register/muster roll/payment vouchers relating to the workman for the period 1.9.87 to 31.5.90. This Tribunal vide order dated 2.12.2005 while disposing the above application, directed the management to produce the documents mentioned in the application. Thereafter, vide order dated 28.8.2006 this Tribunal again directed the management to produce the available records. Despite the specific direction by the Tribunal, the management failed to produce the document relating to the attendance of the workman for the period in question.

14. Now on one hand, workman clearly stated that he worked from 1.9.87 to 31.5.90 with the management and his services were terminated on 1.6.90 and he has completed 240 days in preceding year from the date of termination. On the other hand witness of the management stated that he cannot say without seeing the record whether attendance register, muster roll, payment voucher for the period from 1..9.87 to 31.5.90 are available in the office of Barley Project or not, management failed to produce the record despite the direction by this Tribunal. In these circumstances adverse inference has to be drawn against the management and there is no hesitation in holding that workman has completed more than 240 days preceding the date of termination and his services has been dispensed with without following the mandatory provisions of the I.D.Act 1947 and consequently the termination of his services w.e.f. 1.6.90 is illegal.

15. It is pertinent to mentioned here that the workman worked with the management from 1.9.87 to. 31.5.1990 approximately about 33 months. The reinstatement with back wages is not automatic consequence, instead the workman should be given monetary compensation which will meet the ends of justice. Accordingly in the facts and circumstance of the case, the workman is awarded Rs.75000 one time compensation in lieu of reinstatement

and Rs.10,000 as litigation costs totaling Rs. 85,000 (Eighty five thousand). The management is directed to pay the above amount within period of one month from the date of publication of the Award.

16. The referenced is answered accordingly. Soft as well as hard copy be sent to the Central Govt. for publication.

Chandigarh.

11.09.2014

S. P. SINGH, Presiding Officer

नई दिल्ली, 25 सितम्बर, 2014

**का.आ. 2660.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार दैनिक साहजहापुर क्षेत्रीय ग्रामीण बैंक, के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, जबलपुर के पंचाट (संदर्भ सं. 58/1999) को प्रकाशित करती है, जो केन्द्रीय सरकार को 23.09.2014 को प्राप्त हुआ था।

[सं. एल-12012/119/1998-आईआर (बी-1)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 25th September, 2014

**S.O. 2660.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 58/1999) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur now as shown in the Annexure, in the Industrial Dispute between the management of the Dainik Shajapur Kshetriya Gramin Bank, and their workmen, received by the Central Government on 23.09.2014.

[No. L-12012/119/1998-IR (B-I)]

SUMATI SAKLANI, Section Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

**NO. CGIT/LC/R/58/99**

**PRESIDING OFFICER : SHRI R. B. PATLE**

General Secretary,  
Dainik Shajapur Kshetriya Gramin Bank,  
Karmik Sangathan,  
22, Alkapuri,  
Dewas (MP)

...Workman/Union

Versus

Chairman,  
Dewas Shajapur Kshetriya Gramin Bank,  
Head Office, Station Road,  
Dewas Road,  
Dewas (MP)

...Management

**AWARD**

Passed on this 2<sup>nd</sup> day of September 2014

1. As per letter dated 13-1-99 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No. L-12012/119/98/IR(B-I). The dispute under reference relates to:

“Whether the action of the management of Chairman, Dewas Shajapur Kshetriya Gramin Bank in stopping the annual increment for one year in r/o Shri Durgaprasad Chidgaia w.e.f. 21-1-97 is justified? If not, to what relief the workman is entitled for?”

2. After receiving reference, notices were issued to the parties. Ist party workman submitted statement of claim at Page 3/1 to 3/3 supporting her claim for illegal stoppage of increment by IInd party w.e.f. 21-1-97. The narration of detailed pleadings is not necessary as the application is submitted by management that the workman is appointed as messenger form 7-9-2001.

3. Workman filed affidavit stating that she is appointed on compassionate ground on 7-9-01. She is not desiring to prosecute her claim against IInd party. Workman is present and admits above facts before me. As such dispute between parties seems to exist between the parties.

4. In the result, No Dispute Award is passed.

R. B. PATLE, Presiding Officer

नई दिल्ली, 25 सितम्बर, 2014

**का.आ. 2661.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मध्य रेलवे, के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण जबलपुर, के पंचाट (संदर्भ सं. 167/1999) को प्रकाशित करती है, जो केन्द्रीय सरकार को 23.09.2014 को प्राप्त हुआ था।

[सं. एल-41012/16/1996-आईआर (बी-1)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 25th September, 2014

**S.O. 2661.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 167/1999) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur now as shown in the Annexure, in the Industrial Dispute between the management of the Central

Railway, and their workmen, received by the Central Government on 23.09.2014.

[No. L-41012/16/1996-IR (B-I)]

SUMATI SAKLANI, Section Officer

**ANNEXURE**

**BEFORE THE CENTRAL GOVERNMENT  
INDUSTRIAL TRIBUNAL-CUM-LABOUR  
COURT, JABALPUR**

**NO. CGIT/LC/R/167/99**

PRESIDING OFFICER : SHRI R. B. PATLE

Shri Dilip Kumar  
S/o Shri Pyarelal,  
Qr.No.936, Lalmathi,  
Dwarkanagar,  
Jabalpur (MP)

...Workman

Versus

Divisional Railway Manager,  
Central Railway,  
Jabalpur

...Management

**AWARD**

Passed on this 1st day of September 2014

1. As per letter dated 7-2-99 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No. L-41012/16/96-IR(B-I). The dispute under reference relates to:

“Whether the action of the management of Central Railway, Jabalpur in terminating the services of Shri Dilip Kumar S/o Shri Pyarelal w.e.f. 10-12-94 is legal and justified? If not, to what relief the said workman is entitled to?”

2. After receiving reference, notices were issued to the parties. Ist party submitted statement of claim at page 2/1 to 2/6. Case of Ist party is that he was working as YKC at Central Railway, Loco, Jabalpur i.e. establishment of IInd party. That after 7 years continuous service, he was removed by IInd party on 10-12-84. Workman further submits that charge sheet was issued to him on 19-8-84 for unauthorized absence of 128 days during the period January, 1983 to May, 1984. That separate Schedule was annexed to the chargesheet showing his absence for 192 days. The enquiry was conducted against him exparte without giving any intimation or opportunity of hearing of defence to the workman. Workman submits that order of his removal from service is illegal. That workman had submitted leave applications but all his applications were rejected

without giving him intimation. Workman challenged order of his wrongful termination filing appeal. His appeal was rejected on 16-1-85. Workman raised dispute following conciliation proceedings challenging legality of his termination. Workman has pleaded that enquiry was conducted ex parte without giving him opportunity. Principles of natural justice were violated by Enquiry Officer. IInd party rejected applications for his leave but no intimation was given to him. On such ground, workman submits that termination of his service is illegal. Enquiry conducted against him is illegal. He prays for his reinstatement with back wages.

3. IInd party filed Written Statement at Page 7/1 to 7/3. Relief prayed by workman are opposed. All material contentions of the workman are denied that charge sheet was issued to him for unauthorized absence of 128 days but subsequently it was found that he was absent for total 190 days during period of 5 years service. The punishment was imposed on workman after issuing charge sheet. Workman remained absent in enquiry proceedings. Govt. had refused to refer the dispute. Said order was challenged before Hon'ble High Court. As per order dated 19-4-99, the dispute has been referred. IInd party submits that workman has no right to question quantum of punishment unless he challenges the procedure. That procedure was followed while conducting enquiry. Workman did not appeared to defend himself. Instead he referred to approach before ALC, Jabalpur. That administration has right to reject application for leave. Leave cannot be claimed as a right. It is denied that principles of natural justice were violated while conducting enquiry against workman. That enquiry was conducted against workman following rules. On such ground, IInd party prays for rejection of claim.

4. Workman filed rejoinder at page 8/1 to 8/3 reiterating contentions in statement of claim. That IInd party in para-2 of the Written Statement accepted about receiving leave applications and refusal of the leave. That employer is bound to give information about refusal of leave applications on granting leave. That IInd party has not complied with said procedure. The termination of workman is illegal. All other contentions in statement of claim are reiterated.

5. Learned predecessor *vide* order dated 3-8-2012 found enquiry conducted against workman as legal and proper. Considering pleadings between parties and order passed on preliminary issue, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

- (i) Whether the misconduct alleged against workman is proved from evidence in Enquiry proceedings?

- (ii) Whether action of the management of Central Railway in terminating the services of Shri Dilip Kumar S/o Shri Pyarelal w.e.f. 10-12-94 is legal and justified? Punishment of removal from service is not justified. It is reduced to with-holding of 3 increments of workman permanently.
- (ii) If not, what relief the workman is entitled to?" As per final order.

### REASONS

6. As stated above, the enquiry conducted against workman is found legal and proper by my predecessor as per order dated 3-8-2012. In view of enquiry conducted against workman found legal and proper, question remains whether findings of Enquiry Officer are supported by evidence or the findings are perverse. Documents of Enquiry proceedings are produced. Exhibit W-1 is copy of charge sheet- unauthorized absence of 128 days during the period January, 83 to May, 84 is alleged. Exhibit W-2 is list submitted in Enquiry Proceedings showing absence of workman for 192 days during period 27-1-83 to 15-5-84. Said document is admitted by management. The documents Exhibit W-3 to W-6 are also admitted by IInd party. From Exhibit W-4, unauthorized absence of 128 days alleged against workman have been proved. Exhibit W-5 is order rejecting the appeal filed by workman. Original papers of enquiry are also produced on record. it appears that workman died during pendency of reference on 8-3-04. Name of his son is shown as Sony Singh Raipur. His name is not substituted on record.

7. The documents discussed above proved unauthorised absence of workman for 128 days. IInd party has admitted in Para-2 of Written Statement about rejection of leave applications of workman. Those documents are not produced in Enquiry Proceedings. The unauthorized period of absence was not continuous as per document Exhibit W-4. The period of unauthorized absence was in broken periods at different times. Considering the absence from duties, the punishment of removal from service appears harsh and exorbitant. Learned counsel for IInd party has not advanced any arguments. In my considered view for unauthorized absence of 128 days punishment of removal from service is excessive and exorbitant. It cannot be sustained. Considering unauthorised absence for 128 days, punishment of withholding 3 increments of workman permanently would be appropriate. I hold accordingly for reasons discussed above. Issue No.1 is recorded in Affirmative and punishment of dismissal is disproportionate. The punishment deserves to be set-aside. Therefore I record my finding in Point No.2 in Negative.

8. **Point No. 3-** In view of my finding in Point No.2, punishment of removal from service for unauthorized



absence for 128 days is excessive, exorbitant, the order of removal from service cannot be sustained. As punishment of removal from service is found illegal, question arises whether workman is entitled for reinstatement with back wages. Workman in his cross-examination says that he is doing private work and receives Rs.1500/- per month since past 12 years therefore the workman doesnot deserve back wages. In my considered view, the punishment of withholding 3 increments of workman would be appropriate. Accordingly I record my finding in Point No.3.

9. In the result, award is passed as under:-

(1) The action of the management in terminating the services of Shri Dilip Kumar S/o Shri Pyarelal w.e.f. 10-12-94 is not legal and proper.

(2) The order of termination of workman is set-aside instead the punishment of withholding 3 increments of workman permanently is imposed.

(3) IInd party is directed to reinstate workman with continuity of service without back wages.

IInd party shall pay cost of Rs.2000/- to the workman.

R. B. PATLE, Presiding Officer

नई दिल्ली, 25 सितम्बर, 2014

**का.आ. 2662.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बंगा ग्रामीण विकास बैंक, के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण कोलकता, के पंचाट (संदर्भ सं. 02/2008) को प्रकाशित करती है, जो केन्द्रीय सरकार को 22.09.2014 को प्राप्त हुआ था।

[सं. एल-12025/01/2014-आईआर (बी-1)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 25th September, 2014

**S.O. 2662.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 02/2008) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Kolkata now as shown in the Annexure, in the Industrial Dispute between the management of the Bangiya Gramin Vikash Bank, and their workmen, received by the Central Government on 22.09.2014.

[No. L-12025/01/2014-IR (B-I)]

SUMATI SAKLANI, Section Officer

## ANNEXURE

### CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

#### Misc. Application No. 02 of 2008

(Under Section 33A of the I.D. Act, 1947)

Arising out of Reference No. 15 of 2003

#### Parties:

Bengal Provincial Gramin Bank  
Employees Association  
C/o. Bangiya Gramin Vikash Bank,  
48, Naya Sarak Road,  
P.O. Berhampore,  
Dist. Murshidabad, Pin – 742101. ...Applicant

#### Vs.

The Chairman,  
Bangiya Gramin Vikash Bank,  
Head Office, BMC House, NH – 34,  
Berhampore, Murshidabad,  
Pin – 742101. ...Opp. Party

**Present:** Justice Dipak Saha Ray, Presiding Officer

#### Appearance:

On behalf of the Management : None

On behalf of the Workmen : None

State: West Bengal.

Dated: 15<sup>th</sup> September, 2014.

#### AWARD

This is an application filed by Bengal Provincial Gramin Bank Employees' Association alleging change of condition of service to the prejudice of the employees by the Bangiya Gramin Vikash Bank during pendency of Reference 15 of 2003 before this Tribunal.

2. When the case is taken up for hearing, none appears on behalf of either of the parties. It appears from the record that in spite of service of notice Bengal Provincial Gramin Bank Employees Association, the Applicant, has not turned up, nor any step is taken by it to proceed with the case. The above conduct of the Applicant goes to show that the Applicant is not at all interested to proceed with the case further.

In view of the above, instant application is dismissed for default.

Justice DIPAK SAHA RAY, Presiding Officer

Dated, Kolkata,  
The 15<sup>th</sup> September, 2014.

नई दिल्ली, 25 सितम्बर, 2014

**C R No. 84/2007**

**का.आ. 2663.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार स्टेट बैंक ऑफ मैसूर, के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण बेंगलूर, के पंचाट (संदर्भ सं. 82, 83, 84, 85/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 25.09.2014 को प्राप्त हुआ था।

[सं. एल-12012/69, 67, 66, 38/2005-आईआर (बी-1)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 25th September, 2014

**S.O. 2663.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 82, 83, 84, 85/2007) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Bangalore as shown in the Annexure, in the Industrial Dispute between the management of the State Bank of Mysore, and their workmen, received by the Central Government on 25.09.2014.

[No. L-12012/69, 67, 66, 38/2005-IR (B-I)]

SUMATI SAKLANI, Section Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

Dated : 12<sup>th</sup> September, 2014

**PRESENT :** Shri S. N. NAVALGUND Presiding Officer

**C R No. 82/2007**

#### I Party

Sh. Panduranga Raju, S/o Sh. Krishna Raju, No. 2197, 17<sup>th</sup> Block, Janapriya Township, Magadi Road, Bangalore – 560 030

#### II Party

The Deputy General Manager, State Bank of Mysore, Bangalore Z O, I floor, BKG Complex, Avenue Road, Bangalore – 560 009.

**C R No. 83/2007**

#### I Party

Sh. Mohd. Altaf, S/o Sh. MD. Husain, D. Kunnala Post, Gubbi Taluk, Tumkur Dist – 572219. Karnataka

#### II Party

The Deputy General Manager, State Bank of Mysore, Bangalore Z O, I floor, BKG Complex, Avenue Road, Bangalore – 560 009.

#### I Party

Sh. R.P. Jayapal, S/o Parthasarathy Chetty, No. 201, MSR Nagar, Mathikere, Bangalore – 560 054.

#### II Party

The Deputy General Manager, State Bank of Mysore, Bangalore Z O, I floor, BKG Complex, Avenue Road, Bangalore – 560 009.

**C R No. 85/2007**

#### I Party

Sh. G. N. Govinda Raju, S/o Narsappa, 6<sup>th</sup> Cross, New Extension, Gubbi, Bangalore

#### II Party

The Deputy General Manager, State Bank of Mysore, Bangalore Z O, I floor, BKG Complex, Avenue Road, Bangalore – 560 009.

#### Appearances:

I Party : Sh. S V Shastri Advocate

II Party : Shri Ramesh Upadhyaya Advocate

#### AWARD

The Central Government *vide* order Nos. L-12012/69/2005-IR(B-I) dated 25.06.2007; L-12012/67/2005-IR(B-I) dated 29.06.2007; L-12012/66/2005-IR(B-I) dated 28.06.2007 and L-12012/38/2005-IR(B-I) dated 28.06.2007 made these references with the following Schedules respectively:

#### SCHEDULE

**C R No. 82/2007**

Whether the action of the management of the State Bank of Mysore in terminating the services of Shri Panduranga Raju w.e.f. 30.11.1999, is justified? If not, to what relief the workman concerned is entitled?

**C R No. 83/2007**

Whether the action of the management of the State Bank of Mysore in terminating the services of Shri Mohd. Altaf w.e.f. March, 2000, is justified? If not, to what relief the workman concerned is entitled?

**C R No. 84/2007**

Whether the action of the management of the State Bank of Mysore in terminating the services of Shri R. P. Jayapal S/o Parthasarathy Shetty w.e.f. 31st March 2000, is justified? If not, to what relief the workman concerned is entitled?

**C R 85/2007**

Whether the action of the management of the State Bank of Mysore in terminating the services of Shri Govindaraju w.e.f. June 1998, is justified? If not, to what relief the workman concerned is entitled?"

2. On receipt of the references registering them in CR 82/2007, 83/2007, 84/2007 and 85/2007 when notices were issued to the I Party and the II Party they entered their appearance through their respective advocates and filed their claim and counter statement respectively.

3. All these references are being in respect of temporary sub-staff worked in state bank of Mysore in its different branches to consider whether their termination is justified and almost the pleadings, evidence adduced and arguments addressed are common all these references are taken up for disposal through this common award.

4. In all these references in the claim petitions certain assertions are also made for regularisation of their services and they are retorted by the other side in the counter statement, the schedule of reference being only as to the justification of termination and not for regularisation the pleadings in that regard being irrelevant the same are not adverted to.

5. In all the claim statements the I Party have claimed that they have worked continuously for more than 240 days in a year and they have been denied work from certain date without complying the provisions of Section 25(f) amounting to illegal retrenchment. The I Party in C R 82/2007 (Panduranga Raju) claims that he started working from the Month of August 1998 at Richmond Road Branch and thereafter he also worked at its Banashankari and M G Road branches during 1998 to 1999 and to his surprise he was refused work from 30.11.1999 without compliance of Section 25(f). The I Party in CR 83/2007 (Mohd. Altaf) asserts he has intermittently worked between September 1990 to June 2002 in different branches of II party bank like Seegehalli, C S Pura, Gubbi Taluk, M S Building Branch and Yeswanthpur Market Yard Branch and there after he was denied work without complying the provisions of Section 25(f) of ID Act. The I Party in C R 84/2007 (Jayapal) claims that he started work in Madhavnagar Branch of the II Party in May 1997 and intermittently he worked in that branch and Yeswanthpur market Yard Branch till March 1999 and from 31.03.2000 he was denied work without complying the provisions of Section 25(f) of ID Act. The I Party in C R 85/2007 (Govinda Raju) claims that he started working in the year 1992 at Gubbi Branch of the II party and intermittently worked at its different branches like Chickpet upto June 1998 and from June 1998 he was denied work without complying the provisions of Section 25(f) of ID Act.

6. In the counter statements apart from retorting the claim of regularisation it has been contended that in no calendar year the I Party workmen having worked more than 240 days, there was no need to comply the provisions of Section 25(f) as such they are not entitle for any relief.

7. In all the references the II Party while filing the affidavit of Sh. Eswari Prasad, Chief Manager examining him on oath as MW 1 without getting any documents exhibited closed its side. INTERALIA, in all the references the learned advocate appearing for the I Party while cross-examining MW 1 getting exhibited eight circulars relating to Authorisation in favour of Branch managers to appoint Temporary Sub-ordinate staff and the certificates issued by the Branch Managers in respect of each workmen as Ex. W-9, 10, 11 and 12 series while filing the affidavit of the I Party workmen reiterating the assertion made in their claim statement examined them as WW 1.

8. On appreciation of the pleadings, oral and documentary evidence brought on record by both the sides, in the light of the arguments put forward by learned advocates, I have arrived at conclusion the II party being not justified in terminating their services and that they are entitle for restoration of their name in the panel of the sub-staff of the II Party bank for the following

**REASONS**

9. As already stated by me above since the schedule of reference is as to Whether the action of the management of the State Bank of Mysore in terminating the services of I Party workmen is justified who are all temporary substaff, I may say that there is no scope to consider the claim of the I Party for regularisation or permanency of their job and I am required to consider only whether the II party is justified in terminating their temporary sub-staff service from the dates mentioned in schedule to the respective references.

10. There being no dispute the I Party workmen having intermittently worked as temporary sub-staff in different branches of the II Party bank in respect of which the Branch Managers of those branches have issued certificates produced at Ex. W-9, 10, 11 and 12 series, I have to see whether these workmen have worked for 240 or more than 240 days in any block of a calendar year. The certificates marked as Ex. W-9 series are being in respect of workman covered in C R 82/2007, it is indicated that he has worked in August 1999 for 16 days, September 1999 for 28 days, October 1999 for 24 days; November 1999 for 22 days at M G Road Branch and for 89 days between 10.08.1998 to 18.11.1998 at Richmond Road Branch, 85 days from 22.02.1997 to 24.05.1999 at Avenue Road Branch and 31 days in December 1998, 25 days in January 1999, 23 days in February 1999 at Banashankari Branch. If 12 months block period from August 1998 is

considered by end of July 1999 his working days (90 + 78 + 85) comes to 253 days. Similarly Ex. W-10 series relating to I Party workman Mohd. Altaf in C R 83/2007 discloses that he had worked from September 1990 to February 1991 for 89 days; September 1991 to August 1992 for 89 days; September 1992 to March 1993 for 48 days; April 1993 to November 1993 for 40 days; March 1995 to December 1995 for 74 days; July 1995 to March 1996 for 97 days; April 1996 to August 1996 for 97 days; February 1997 to March 1997 for 30 days; May 1997 to July 1997 for 40 days; July 1997 to September 1997 for 56 days; November 1997 to February 1998 for 85 days; August 1998 to October 1998 for 82 days; January 1999 to June 1999 for 123 days; July 1999 to August 1999 for 48 days; November 1999 to March 2000 for 88 days; August 2001 to December 2001 for 66 days and January 2002 to June 2002 for 52 days, if 12 months block period from August 1998 to July 1999 is considered by end of July 1999 his working days (82 + 123 + 27) comes to 232 days and if the intervening Sundays & holidays of the block period since works out for more than 8 days in this block, it could be said that he has worked more than 240 days in a calendar year. Now coming to the workman Sh. Jaypal covered in C R 84/2007 Ex. W-11 series indicates that he had worked from May 1997 to August 1997 for 97 days; October 1997 to January 1998 for 81 days; April 1998 to July 1998 for 90 days; February 1999 to March 1999 for 54 days and September 1998 to December 1998 for 99 days and if the block period of 12 months from April 1998 to March 1999 is considered the total days he has worked (90 + 99 + 54) comes to 243 days, hence he too has worked more than 240 days in a block of 12 calendar months. Coming to Sh. Govinda Raju covered in C R 85/2007 Ex. W-12 series do indicate that he has worked from May 1982 to October 1982 for 90 days; January 1987 to June 1987 for 90 days; January 1988 to December 1988 for 69 days; January 1994 to December 1994 for 119 days; January 1995 to December 1995 for 196 days; January 1996 to December 1996 for 160 days; June 1997 to September 1997 for 90 days and November 1997 to June 1998 for 191 days and if the block period of 12 months from June 1997 to May 1998 is considered the total days he has worked (90 + 164) comes to 254 days and thereby he too has worked for more than 240 days in a block period of 12 calendar months. Since admittedly the II Party employer having not issued one month's notice or one month's wage in lieu of one month's notice and compensation equivalent to 15 days average pay for every completed year of service to all these workmen it amounts to retrenchment in violation of provisions of Section 25(f) and is void abinitio and they are presumed to be in service as temporary sub-staff and they are entitle for an order to restore their name in the panel of temporary sub-staff but having regard to the nature of their and engagement as temporary sub-

staff in the place of the leave vacancy exigencies of work load and some delay in approaching the ALC(C) for conciliation these are not fit case to award or grant back wages, in the result, I pass the following

### ORDER

All these references are allowed holding that the management of State Bank of Mysore is not justified in terminating the services of Sh. Panduranga Raju, Sh. Mohd. Altaf, Sh. Jayapal and Sh. Govindaraju w.e.f. 30.11.1999, March 2000, 31.03.2000 and June 1998 respectively and that they are entitle for restoration of their name in the panel of the sub-staff of the II Party bank.

S. N. NAVALGUND, Presiding Officer

नई दिल्ली, 25 सितम्बर, 2014

**का.आ. 2664.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार स्टेट बैंक आफ इंदौर, के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण जबलपुर, के पंचाट (संदर्भ सं. 173/1997) को प्रकाशित करती है, जो केन्द्रीय सरकार को 23.09.2014 को प्राप्त हुआ था।

[सं. एल-12012/219/1995-आईआर (बी-1)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 25th September, 2014

**S.O. 2664.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 173/1997) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the Industrial Dispute between the management of the State Bank of Indore, and their workmen, received by the Central Government on 23.09.2014.

[No. L-12012/219/1995-IR (B-I)]

SUMATI SAKLANI, Section Officer

### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/173/97

**PRESIDING OFFICER: SHRI R.B.PATLE**

State President,  
M.P.Bank Karamchari Sangh,  
Lohia Bazaar,  
Lashkar,  
Gwalior(MP)

...Workman/Union



Versus

Regional Manager-III,  
State Bank of Indore,  
Regional Office, Modi House,  
Jhansi Road,  
Gwalior (MP)

...Management

**AWARD**Passed on this 5<sup>th</sup> day of September 2014

1. As per letter dated 23-6-97 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-12012/219/95-IR(B-I). The dispute under reference relates to:

“ Whether the action of the management of State Bank of Indore in permitting supersession of Shri Mahip Seth Clerk/Cashier at Kampou branch is legal and justified? If not, to what relief the workman is entitled for?”

2. After receiving reference, notices were issued to the parties. Despite of repeated notices issued to workman, workman failed to appear. Workman did not participate in reference proceeding. He was proceeded exparte on 8-10-2013.

3. Management also not filed Written Statement in the matter though appearance is caused through Advocate Rajneesh Gupta.

4. In above circumstances, Tribunal is compelled to pass No Dispute Award.

R. B. PATLE, Presiding Officer

नई दिल्ली, 25 सितम्बर, 2014

**का.आ. 2665.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारत संचार निगम लिमिटेड, रांची, के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण श्रम न्यायालय-2, धनबाद, के पंचाट (संदर्भ सं. 113/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 22.09.2014 को प्राप्त हुआ था।

[ सं. एल-40012/02/2013-आईआर (डीयू) ]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 25th September, 2014

**S.O. 2665.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central

Government hereby publishes the Award (Ref. No. 113/2013) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 2, Dhanbad now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of the Bharat Sanchar Nigam Limited, Ranchi, and their workman, received by the Central Government on 22.09.2014.

[No. L-40012/02/2013-IR (DU)]

P. K. VENUGOPAL, Section Officer

**ANNEXURE**

**BEFORE THE CENTRAL GOVERNMENT  
INDUSTRIAL TRIBUNAL (NO.2), AT DHANBAD**

**PRESENT:**

Shri Kishori Ram, Presiding Officer.

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D.Act.,1947.

**REFERENCE NO. 113 OF 2013.****PARTIES:**

SRI SHASHI BHUSAN BHASKAR (Munna)  
Ex-Casual worker of BSNL, SDE (Central),Tunki Tolla  
(Football Ground)  
PO- RMCH,P;S. Sadar Kokar,Ranchi,Jharkhand.

**Vs. The SDE**

Bharat Sanchar Nigam Ltd, Ranchi, Jharkhand  
Ministry's Order No L-40012/02/2013-IR(DU)  
dt.15.04.2013

**APPEARANCES :**

On behalf of the : None  
workman/Union

On behalf of the : Mr. Sushil Pd. Ld. Advocate.  
Management

State : Jharkhand  
Industry : Telecommunication  
Dated, Dhanbad, the 26<sup>nd</sup> August, 2014.

**AWARD**

The Government of India, Ministry of Labour, in exercise of the powers conferred on then under Sec.10(1)(d) of the I.D. Act.,1947 has referred the following dispute to this Tribunal for adjudication vide their Order No L-40012/02/2013-IR(DU) dt.15.04.2013.

**SCHEDULE**

“Whether the termination of services of Sri Shashi Bhusan Bhaskar (Munna), Ex-Casual Worker of BSNL, SDE (Central) w.e.f. April, 2012 is legal

and justified? If to what relief the workman is entitled to?"

2 Neither workman Shashi Bhusan Bhaskar (Munna) appeared nor any written statement with his documents has been filed on his behalf. Mr. Sushil Prasad, Ld. Advocate for O.P./Management has also not appeared.

On going through the Case Record, I find that the case has all along been pending for filing written statement with documents to be filed on behalf of the workman, for which three Regd. Notices dt. 30.5.13, 8.1.2014 and 25.03.2014 were issued to him on his address as noted in the reference itself, yet not a single notice of the Tribunal could be responded by him on any date. The very conduct of the workman appears to be quite uninterested in pursuit of his own case for final adjudication. In this circumstance, it appears to be No Industrial Dispute existing. Therefore, the case is closed as No I.D. and accordingly an Order of 'No Dispute Award' is passed.

KISHORI RAM, Presiding Officer

नई दिल्ली, 25 सितम्बर, 2014

**का.आ. 2666.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार आल इंडिया रेडियो, के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण श्रम न्यायालय-2, दिल्ली, के पंचाट (संदर्भ सं. 29/2008) को प्रकाशित करती है, जो केन्द्रीय सरकार को 22.09.2014 को प्राप्त हुआ था।

[सं. एल-40011/15/2008-आईआर (डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 25th September, 2014

**S.O. 2666.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 29/2008) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 2, Delhi now as shown in the Annexure, in the Industrial Dispute between the management of the All India Radio, and their workmen, received by the Central Government on 22.09.2014.

[No. L-40011/15/2008-IR (DU)]

P. K. VENUGOPAL, Section Officer

#### ANNEXURE

#### CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT - II, KARKARDOOMA COURT COMPLEX, DELHI

Present: SHRI HARBANSH KUMAR SAXENA

ID No. 29/2008

Sh. Ramji Lal and Shri Chander Pal

Versus

ALL INDIA RADIO

NO DISPUTE AWARD

The Central Government in the Ministry of Labour vide notification No. L- 42011/15/2008-(IR(DU)): dated 11.06.2008 referred the following industrial Dispute to this tribunal for the adjudication :-

“Whether the demand of the Janvadi General Kamgar Mazdoor Union for regularization of service of Sh. Ramji Lal and Shri Chander Pal, by the management of Executive Engineer, Civil Construction Wing, All India Radio, is legal and justified? If yes, to what relief the workmen are entitled to?”

On 16.06.2008 reference was received in this tribunal. Which was register as I.D No. 29/2008 and claimants were called upon to file claim statement with in fifteen days from date of service of notice. Which was required to be accompanied with relevant documents and list of witnesses.

After service of notice Workmen /Claimants filed claim statement on 16.10.2008.

On the basis of contents of claim statement workmen Sh. Ramji Lal & Chander Pal prayed that this Hon'ble tribunal may kindly award equal pay for equal work to Sh. Ramji Lal & Chander Pal from their initial date of employment i.e. 01.09.1988 and 01.11.1988 respectively being the incidental matter of the reference and also award for regularization for both the workmen w.e.f. 08.01.1994 as Beldar from the date when the services of his juniors were regularized in the pay scale R. 750-950 and revised w.e.f. 01.01.1996 in the pay scale of Rs. 2550-3200 alongwith all consequential benefits.

In reply to claim statement management filed written statement on 30.03.2009. Against that Written Statement workmen filed rejoinder on 27.05.2009. Wherein both workmen reaffirmed contents of claim statement.

Management on 15.12.2012 filed amended written statement. Wherein it also mentioned as follows:-

#### PRELIMINARY OBJECTION

1. That Sh. Ramji Lal was engaged as casual labour/gardener on Muster Roll w.e.f. 01.08.1988 and his services were terminated on one month notice dt. 06.07.1989 and dispensed with his services w.e.f. 05.08.1989. Similarly Sh. Chander Pal was engaged as casual labour/gardener on Muster Roll w.e.f. 01.11.1988 and his services were terminated from 05.08.1989 after giving notice.

2. That after termination of services, both the workmen filed Petition (OA No. 1527/1989) before

Central Administrative Tribunal, New Delhi. The Hon'ble Court rejected all the pleas of the workman, but directed the management vide order dt. 08.02.1990 and thus both the workmen were appointed on 09.02.1990.

3. That Sh. Ramji Lal was granted temporary status w.e.f 10.09.1993 and Sh. Chander Pal was granted temporary status w.e.f 01.09.1993.

4. That vide order dt. 21/26.05.2009 (copy enclosed as Annexure-A), the services of both the workmen are regularized w.e.f. 08.05.2009 (AN) in the post of Beldar. Hence nothing remained to be done and I.D stood complied with.

On 17.05.2013 My Ld. Predecessor passed following order on order sheet:-

“On perusal of pleadings, it came to light that no other issue, than those reference by the appropriate Government for adjudication, is made out. Adjourned for evidence of the parties for 01.08.2013. Claimant to conclude first. Long dateis given at the request of Sh. Prasad”.

Since 1.08.2013 workmen took 13.09.2013, 23.10.2013, 17.12.2013, 31.1.2014, 25.03.2014, 01.05.2014, 07.07.2014 and 02.09.2014 for their evidence inspite of these opportunities neither workmen appeared nor adduce any evidence on their behalf. Hence on 02.09.2014 this tribunal came to conclusion that workmen is not interested in the further progress of the case and fixed 05.09.2014 for no dispute award.

Perusal of record makes it crystal clear that Labour Ministry send a reference for following adjudication:-

“whether the demand of the Janvadi General Kamgar Mazdoor Union for regularization of service of Sh. Ramji Lal and Shri Chander Pal, by the management of Executive Engineer, Civil Construction Wing, All India Radio, is legal and justified? If yes, to what relief the workmen are entitled to?”

Contents of amended Written Statement makes it crystal clear that workmen have already been regularized by management. Probably due to this fact workmen is not turning up.

In these background nothing remains to be decided in favour of workmen. Hence it is fit case in which no dispute award shall be passed.

Question of determination No.1 of schedule of reference is liable to be decided accordingly. Which is decided accordingly.

No Dispute Award is accordingly passed.

Dated:-05/09/2014

HARBANSH KUMAR SAXENA, Presiding Officer

नई दिल्ली, 25 सितम्बर, 2014

**का.आ. 2667.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सीपीडब्ल्यूडी, नई दिल्ली, के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, दिल्ली के पंचाट (संदर्भ सं. 17/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 22.09.2014 को प्राप्त हुआ था।

[ सं. एल-42011/58/2008-आईआर (डीयू) ]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 25th September, 2014

**S.O. 2667.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 17/2009) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 2, Delhi now as shown in the Annexure, in the Industrial Dispute between the employer in relation to the management of the CPWD, New Delhi, and their workmen, received by the Central Government on 22.09.2014.

[No. L-42011/58/2008-IR (DU)]

P. K. VENUGOPAL, Section Officer

#### ANNEXURE

#### CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT - II, KARKARDOOMA COURT COMPLEX, DELHI

**Present:** Shri Harbansh Kumar Saxena

ID No.17/2009

Sh. Pratap Singh, S/o Late Sh. Nathu Lal

All India Central PWD (MRM) Karamchari Sangathan  
(Regd.),

House no. 4823, Gali No. 13., Balbir Nagar Extension,  
Shahadra, Delhi-110032.

Versus

The Executive Engineer (E)

Agra Central Elect. Division, CPWD,

Sanjay Palace, Agra, UP.

Chief Engineer (Elect), CPWD Northern Zone, East  
Block, R.K. Puram, ND-110066.

#### NO DISPUTE AWARD

The Central Government in the Ministry of Labour vide notification No. L- 42011/58/2008-IR(DU): dated 02.03.2009 referred the following industrial Dispute to this tribunal for the adjudication :-

“Whether the demand of the All India CPWD (MRM) Karamchari Sangathan for employment of Sh. Pratap Singh S/o Late Sh. Nathu Lal on compassionate ground, from the management of CPWD is legal and justified? If yes, to what relief the above legal representative of the late workman is entitled to?”

On 23.03.2009 reference was received in this tribunal. Which was register as I.D No. 17/2009 and claimant was called upon to file claim statement with in fifteen days from date of service of notice. Which was required to be accompanied with relevant documents and list of witnesses.

After service of notice Workman /Claimant filed claim statement on 22/01/10. Wherein he prayed as follows:-

- (a) The Hon'ble Court may kindly be pleased to award appointment on compassionate grounds to Sh. Pratap Singh S/o Late Nathu Lal, workman; and /or
- (b) In the event of non-availability of vacancy in the CPWD for such appointment, the Hon'ble Court may kindly be pleased to award lump sum payment to tide over the crisis due to death of his father.

Management filed Written statement on 28.05.2010 though which management challenged the contents of claim statement and prayed for rejection of claim statement.

On 18.04.2013 My Ld. Predecessor passed following order on order sheet:-

“On perusal of pleadings, it came to light that no other issue, than those referred for adjudication, is made out. Adjourned for evidence of the parties for 13.06.2012. Claimant to conclude first”.

Thereafter claimant was called upon to adduce his evidence. Instead of adducing his evidence he moved an application for withdrawal of the case but on 28.07.2014 I was on leave. Hence 08.09.2014 was fixed for order.

Contents of application are as follows:-

#### **Application for withdrawal of the case**

Most Respectfully Showeth:-

1. That the above ID case is pending before the Hon'ble Court for proper adjudication. The next date of hearing for the same is fixed on 28.07.2014.
2. That the cause of the applicant is this ID was for appointment under compassionate ground which was earlier rejected by the management.
3. That the management of CPWD upon implementation of order of DOPT issued on 26.07.2012, have now reconsidered the case of the applicant for appointment on compassionate ground and as of now it is under re-consideration.

4. In light of the above facts and circumstances, the above ID pending before the Hon'ble Court is withdrawn with immediate effect and no further action in the case is required now and Award pass accordingly.

Which makes it crystal clear that workman require nothing to be adjudicated by this tribunal.

In this background question of determination No.1 of schedule of reference does not require any determination. Which is accordingly decided.

No Dispute Award is accordingly passed.

Dated:-08/09/2014

HARBANSH KUMAR SAXENA, Presiding Officer

नई दिल्ली, 25 सितम्बर, 2014

**का.आ. 2668.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बीएसएनएल, के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, दिल्ली, के पंचाट (संदर्भ सं. 1/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 22.09.2014 को प्राप्त हुआ था।

[सं. एल-40012/92/2010-आईआर (डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 25th September, 2014

**S.O. 2668.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 1/2011) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 2, Delhi now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of the BSNL, and their workman, received by the Central Government on 22.09.2014.

[No. L-40012/92/2010-IR (DU)]

P. K. VENUGOPAL, Section Officer

#### **ANNEXURE**

#### **CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT - II, KARKARDOOMA COURT COMPLEX, DELHI**

**Present:** Shri Harbansh Kumar Saxena

#### **ID No. 1/11**

Sh. Kamal Kishor & Rajinder Singh BSNL,  
Asthai Karamchari Sangh Western(UP)  
C/o BMS, 32, Chakrata Road,  
Dehradun

#### **Versus**

1. The Chief General Manager,  
BSNL Western (UP), Telephone Exchange Building,  
Shastri Nagar, Merut, (UP)



2. The General Manager, BSNL,  
A-23, Jaina Towers, Ghaziabad (U.P)

3. The Asstt. Gen Manager (Admin.),  
BSNL, A-23, Jaina Towers, Ghaziabad (U.P.)

### AWARD

The Central Government in the Ministry of Labour vide notification No L-40012/92/2010-IR(DU) dated 21.12.2010 referred the following industrial Dispute to this tribunal for adjudication :-

“Whether the action of the management in not regularizing services of part time casual labourer Shri. Kamal Kishore and Rajender Singh is illegal and unjustified? To what relief the workmen are entitled to?”

On 10.01.2011 reference was received in this tribunal. Which was register as I.D No. 1/11 and claimants were called upon to file claim statement with in fifteen days from date of service of notice. Which was required to be accompanied with relevant documents and list of witnesses.

After service of notice workmen/claimants filed claim statement on 25.02.2011.

On the basis of contents of claim statement. Workmen Sh. Kamal Kishor and Sh. Rajinder Singh prayed that they be regularized since 1.08.1998 and they be provided all benefits as well as salary equal to regularized workmen.

In reply to claim statement management filed Written Statement. Wherein management denied the allegation of claimants. It is also alleged that claim statement is based on wrong facts. Hence not liable to be allowed. Therefore claim statement is liable to be dismissed.

Workmen Sh. Kamal Kishor and Sh. Rajinder Singh on 21.06.2014 filed rejoinder. Wherein they reaffirmed their claim mentioned in claim statement.

My Ld. Predecessor on 19.01.2012 mentioned in order sheet that Ld. A/R's for the parties did not pressed for any issues other than one mentioned in reference.

On the basis of which My Ld. Predecessor fixed 22.3.2012 for workmen evidence.

### **Workman Sh. Kamal Kishore in support of his case filed his affidavit in his evidence on 10.09.2012.**

1. That the deponent is the workman concerned in the above noted case and is well conversant with the facts and circumstances of the case and is competent to swear this affidavit.

2. That the deponent joined as a part time casual labour as sweeper in the office of S.D. O. Phones, Murad Nagar, Ghaziabad, U.P. on 01.09.1993.

3. That as per the initial appointment, the duty of the deponent /workman was fixed for certain time, but as per timely requirement it has been extended without any interval by the respondent.

4. That the deponent during the service period become member of B.S.N.L Asthai Karamchari Sangh, Paschimi Uttar Pradesh (Regd.) Union. The deponent had performed/served his duty continuously without any break upto 5-6 years. In the above said circumstances, it has been necessary that the deponent/workman should be continued as a regular employee, if he has done, this much service without any delay as per the law.

5. That as per initial appointment, the deponent appointed as casual labour, but he has tendered his service more than 240 days in each Calendar Year. As per the circular of the Govt. of India, Ministry of Communication, Department of Telecommunication, Sanchar Bhawan, New Delhi, bearing No. 269-13/99-STN-II dated 16.09.1999 by Assistant Director General (STN). Those worker/employees doing his service as a casual labourer, working with 4 or more hours per day, contract base or temporary status they should be convert into full time casual labourer.

6. That the deponent made a several representation before the respondent to give the status of regular employee because of the deponent is deserving as a Group 'D' Employee.

7. That the deponent is specially stated here that Smt. Arti Devi and Sh. Manoj Kumar, both were the casual labour was appointed on dated 01.04.1995 i.e. Hapur and Pilakhua Office. Their services become a regular services in the month of October 2000.

8. That the deponent has made representation before the respondent on 04.06.2002 and pray to regularize its service and specifically it has been mentioned by the deponent in his application that the other his junior employee was regularized but why he has been not getting this opportunity.

As per the letter No. 269-13/99 STN- II dated 16.09.1996 and dated 25.08.2000, the workman/employee who has been done 24 days services without any delay, their services should be regularized.

9. That as per the letter dated 27.07. 2001 of SDO Phones, Murad Nagar, Ghaziabad, U.P., the deponent has completed his service 5 year 7 months on 01.08.1998, on this ground the deponent was entitled for temporary status and was entitled for regularization in Group 'D'.

10. That after several representation made by the deponent for getting the regularization of his service to the respondent, but no action of this reply has been executed by the respondent, then and there the deponent made a reminder letter before the respondent.

That after getting the above reminder letter, Assistant Telephone (E) on dated 28.10.2002 send a letter to the deponent that to become a regular service of the deponent, they are considering.

11. That on 16.12.2002 Assistant Director National Commission giving the direction to the respondent that the deponent/workman services should be regularized with immediate effect.

12. That after getting the unsatisfactory answer or demoralized by action taken regarding the legalization of the service of the deponent, the deponent moved before the Hon'ble High Court at Allahabad, U.P. in Civil Writ Petition No. 11216 OF 2008, which was disposed off 10.03.2003 by the Hon'ble Justice Mr. S.K. Singh. After that the respondent has been dismissed its regularization proceeding in a very sharp manner.

13. That after that the deponent filed a civil Misc. Writ Petition bearing No. 44367 of 2003 on dated 01.09.2003 and the same has been dismissed by the Hon'ble Court on dated 23.07.2004. Later on the deponent moved before Hon'ble High Court at Allahabad in Special Civil Appeal bearing No. 1292 of 2004. Hon'ble High Court at Allahabad dismissed the above Civil Appeal on 31.03.2009 with a view that the petitioner/appellant can avail the remedy of appeal under the Industrial Disputes Act. However, he does not dispute that the appellants had remedy under the provision of U.P. Industrial Dispute Act, 1947. In our opinion the discretion exercise by the Ld. Single Judge relegating the appellants to avail the remedy under the provision of the U.P Industrial Disputes Act, 1947 does not suffer from any error calling for any interference in this appeal. We do not find any merit in the appeal and it is dismissal accordingly.

14. That after that the deponent filed the above noted claim petition before the Assistant Labour Commissioner, Kaulagarh Road, Dehradun, where it was now decided. After that above Industrial Dispute has been referred to before this Tribunal –cum-Labour Court for adjudication under section 10 of the Industrial Disputes Act, 1947.

15. That the deponent is relying the document **Ext. WW-1/1 to Ex. WW-1/9.**

16. That the contents of the above affidavit has been read over to me in vernacular language which are true and correct.

**On 23.09.2013 affidavit of Workman was tendered & he was cross-examined on 7.11.2013. His examination-in-chief and cross-examination is as follows:-**

My affidavit exhibit (Evidence by way of affidavit) tender before the court will be realized as a evidence in chief.

XXX by Sh. A.K. Sharma.

I had gone through the contents of affidavit after that I put my signature. I had appointed the BSNL for job

on several times in the year on 01.01.1993. I applied for job in BSNL . At that time I got job in DOT. I directly went to get job. There was no advertisement for vacancy in any paper my duty hours was six hours . Which commens from 6am to 12 pm. I was not aware of the fact that when regular employee will appoint my services will not regularized. Appointments letter was not given to me. No time for part time casual time worker was fixed in my case. No renewal letter was given to me as I was in continuing service. I worked continuously for about six years. It is correct to suggest that four hours duty was assigned to me. I am not aware whe DOT.

Converted into BSNL. I made representation before BSNL Authority for my regularization letters is on record.

I made representation repeatedly.

Question:- Can you show those representations on record.

Ans. There is no such letter on record.

It is correct that I have filed W.P in Allahabad High Court for my regularization . Hon'ble High court decided that I must seek remedy from Labour Court . It is incorrect to suggest that I was not employee of BSNL . There is no written order of my termination. It is incorrect to suggest that no termination order was given to me as I was not employee of BSNL. It is not in employee of BSNL. It is not in my knowledge whether any employee has been appointed by BSNL after my appointment. It is wrong to suggest that I am deposing falsely. It is also wrong to suggest that I have filed affidavit wrongly without any instructions.

Workman She Rajender Singh in support of his case filed his affidavit in his evidence on 10.09.2012.

1. That the deponent is the workman concerned in the above noted case and is well conversant with the facts and circumstances of the case and is competent to swear this affidavit.

2. That the deponent joined as a part time casual labour as sweeper/Safaiwala in the office of S.D. O. P-III, Raj Nagar, Ghaziabad, U.P. on 01.09.1992.

3. That as per the initial appointment, the duty of the deponent /workman was fixed for certain time, but as per timely requirement it has been extended without any interval by the respondent.

4. That the deponent during the service period become member of B.S.N.L Asthai Karamchari Sangh, Pashcimi Uttar Pradesh (Regd.) Union. The deponent had performed/served his duty continuously without any break upto 5-6 years. In the above said circumstances, it has been necessary that the deponent/workman should be continued as a regular employee, if he has done, this much service without any delay as per the law.

5. That as per initial appointment, the deponent appointed as casual labour, but he has tendered his service more than 240 days in each Calendar Year. As per the circular of the Govt. of India, Ministry of Communication, Department of Telecommunication, Sanchar Bhawan, New Delhi, bearing No. 269-13/99-STN-II dated 16.09.1999 by Assistant Director General (STN). Those worker/employees doing his service as a casual labourer, working with 4 or more hours per day, contract base or temporary status they should be convert into full time casual labourer.

6. That the deponent made a several representation before the respondent to give the status of regular employee because of the deponent is deserving as a Group 'D' Employee.

7. That the deponent is specially stated here that Smt. Arti Devi and Sh. Manoj Kumar, both were the casual labour was appointed on dated 01.04.1995 i.e. Hapur and Pilakhua Office. Their services become a regular services in the month of October 2000.

8. That the deponent has made representation before the respondent on 04.06.2002 and pray to regularize its service and specifically it has been mentioned by the deponent in his application that the other his junior employee was regularized but why he has been not getting this opportunity.

As per the letter No. 269-13/99 STN- II dated 16.09.1996 and dated 25.08.2000, the workman /employee who has been done 24 days services without any delay, their services should be regularized.

9. That as per the certificate of DE Phones, Rajnagar, Ghaziabad, U.P., the deponent has worked more than 24 days in a calendar year. (copy of the same has been exhibited) on this ground the deponent was entitled for temporary status and was entitled for regularization in Group 'D'.

10. That after several representation made by the deponent for getting the regularization of his service to the respondent, but no action of this reply has been executed by the respondent, then and there the deponent made a reminder letter before the respondent.

That after getting the above reminder letter, Assistant Telephone (E) on dated 28.10.2002 send a letter to the deponent that to become a regular service of the deponent, they are considering.

11. That on 16.12.2002 Assistant Director National Commission giving the direction to the respondent that the deponent/workman services should be regularized with immediate effect.

12. That after getting the unsatisfactory answer or demoralized by action taken regarding the legalization of the service of the deponent, the deponent moved before the Hon'ble High Court at Allahabad, U.P. in Civil Writ

Petition No. 11216 OF 2008, which was disposed off 10.03.2003 by the Hon'ble Justice Mr. S.K. Singh. After that the respondent has been dismissed its regularization proceeding in a very sharp manner.

13. That after that the deponent filed a civil Mise. Writ Petition bearing No. 44367 of 2003 on dated 01.09.2003 and the same has been dismissed by the Hon'ble Court on dated 23.07.2004. Later on the deponent moved before Hon'ble High Court at Allahabad in Special Civil Appeal bearing No. 1292 of 2004. Hon'ble High Court at Allahabad dismissed the above Civil Appeal on 31.03.2009 with a view that the petitioner/appellant can avail the remedy of appeal under the Industrial Disputes Act. However, he does not dispute that the appellants had remedy under the provision of U.P. Industrial Dispute Act, 1947. In our opinion the discretion exercise by the Ld. Single Judge relegating the appellants to avail the remedy under the provision of the U.P. Industrial Disputes Act, 1947 does not suffer from any error calling for any interference in this appeal. We do not find any merit in the appeal and it is dismissal accordingly.

14. That after that the deponent filed the above noted claim petition before the Assistant Labour Commissioner, Kaulagarh Road, Dehradun, where it was now decided. After that above Industrial Dispute has been referred to before this Tribunal -cum-Labour Court for adjudication under section 10 of the Industrial Disputes Act, 1947.

15. That the deponent is relying the document Ext. WW-1/1 to Ex. WW-2/9.

16. That the contents of the above affidavit has been read over to me in vernacular language which are true and correct.

**On 23.09.2013 affidavit of Workman was tendered & he was cross-examined on 7.11.2013. His examination-in-chief and cross-examination is as follows:-**

My affidavit exhibit (Evidence by way of affidavit) tender before the court will be realized as a evidence in chief.

XXXX by Sh. A.K. Sharma.

I am eighth pass. I was appointed on 01.09.1992. No appointment letter was issued to me Mr. Prem Singh AE Sh. PC. Ram SDO appointed me I was paid Rs. 750/- p.m. Salary was paid in cash after receiving my signature. I make my presence on Attendance sheet daily. Contents of para 3 of my affidavit are correct. It is incorrect to suggest that I participated in union politics. It is correct that I was member of union. I made representation in written for my regularization. I made such representation in 2002-2003 etc.

I have filed copy of aforesaid representation in this tribunal. If such copy of such representation is on record then I can assign no reason. It is incorrect to suggest that I never been employee of BSNL. No

termination letter was given to me. I was not terminated I was in listed as tender man and record was sent to Dehradun. Now I on working under "Thekedari". It is wrong to suggest that I made false statement of claim to get job. Manoj and Arti Devi has been regularized. No paper of their regularization has been filed by me in this tribunal. It is incorrect to suggest that I am projecting concocted story of regularization of aforesaid employees. I continuously work with the respondents 5 to 6 years. It is wrong to suggest that affidavit filed by me based on untrue facts . It is wrong to suggest that I am not entitled to get job in BSNL. It is wrong to suggest that time to time break has given to me by respondents.

It is wrong to suggest that I am deposing falsely.

In support of its case management filed affidavit of MW1 Sh. D.K. Sharma. Wherein he stated as follows:-

1. I say that the I am working as a legal with the respondent and fully conversant to the facts and circumstances of the case as such competent to swear the affidavit.
2. I say that present claim petition filed by the claimants for regularization of their service without any merits infact the claimants Kamal Kishor and Rajendera Singh were part time workers with the respondents and their services are only for certain period. Therefore, no nay appointment letter has been issued in their favour.
3. I say that the claimants had never completed their 240 days in service since they were assigned a job only for 4 hours per day and therefore their services cannot be treated as a regular job with the respondent.
4. I say that Zonal Office, Dehradun vide its letter dated 02.08.2003 flatly refuse to regularize the service of part time casual labour. Hence, the services of the claimant cannot be regularize in any manner as claimed by the claimant.
5. I say that the other casual labour are not related to the office of respondent. Hence, the claimant cannot be entitled for regularization of the service. Since, the Manoj Kumar, daily wages casual labour was assigned a job for 8 hours per day and this office has recommended for regularization their service but the Zonal office , Dehradun had declined to regularize their service.
6. I say that the claimants has already field the writ petition before the Hon'ble High Court of Allahabad which was dismissed without considered the case of claimants on merits.
7. I say that the claimant are not entitled for any compensation or monetary benefits from the respondent in any manner since they are not a employee of the BSNL . As per the recommendation of the higher authority of the Zonal office, Dehradun the service cannot be regularized in any manner.

8. I say that present petition filed by the claimant are total gross abuse of the process of law. Hence, liable to be rejected with heavy cost.

9. That the contents of the above affidavit has been read over to me in vernacular language which are true and correct.

His affidavit was tender on 21.03.2014 and he was cross-examined on same day. His examination –in-chief and cross –examination is as follows.

I tender in evidence my affidavit Ex. MW1/1 which bears my signatures at point 'A' and 'B'

XXXX by Nirmal Singh Berchiwal, A/R for the workman.

I know each and every thing regarding the claim filed by the workman. Affidavit filed on behalf of management is mine.

Question. Can you tell for which relief claimant file claim?

Ans. Regularization.

I took over charge in 2011 in Ghaziabad as Gen. Manager, Telephone.

Question:- Whether Claimants are continuously working with the BSNL?

Ans. Workman is working as Contract Labour. Workman are Daily wager. Workman worked for about 3 or 4 hours per day.

Question. Whether letter dated 21.07.2000 bearing Ref. No. GMT/G2B/ E-31/ Rectt/Gen/2000-2011/7/ is of your department?

Ans. I cannot say because on the date of issuance of letter I was not posted there.

Question:- Whether contents of para V of your affidavit are correct.

Ans. Yes.

Question:-Whether manoj and Arti are regular employee?

Ans. I have no knowledge.

Question. Whether Rajender and Kamal Kishore worked in your department regularly more than 240 days?

Ans. It is wrong.

Thereafter I have heard the arguments of Ld. A/Rs for the parties at length.

Ld. A/R for the workman vehemently argued that workman Sh. Rajinder Singh is casual workman of management and was working since 1.09.1992. Sh. Kamal Kishor is also casual worker of the management who was working with management since



01.01.1993. Their services have not been regularized although they have worked for more than 240 days in each calendar year since their joining. To prove their case workmen adduced their oral evidence by way of filing their affidavit in their evidence which was subsequently tendered by them alongwith relevant documents. Both workmen have been presented for cross-examination but nothing could be extracted out from their cross-examination by Ld. A/R for the management.

Juniors Smt. Aarti Devi and Sh. Manoj Kumar have become regularized but management ignored aforesaid workmen in regularization.

On the basis of their evidence both workmen proved their case of completion of continuous service of 240 days in each calendar year .

On the basis of which they are entitled for the benefit of regularization as per provision of Section 25-B of ID Act, 1947.

In addition to it department has sent several letters to superior officers for making them regularized . Photocopies of those letters in support of evidence of workmen is on record. Management could not dare to rebut that official evidence of officers of its department.

Moreover judicial notice of this fact may be taken as per provision of Sections 56 & 57 of Indian evidence Act.

On the basis of aforesaid arguments Ld. A/R for the workmen stressed that workmen Sh. Kamal Kishor and Sh. Rajinder Singh are liable to be regularized since 01.08.1998 and entitled for all benefits equal to benefits of regularized workmen.

While on the other hand Ld. A/R for the management counter contended that neither workmen Sh. Kamal Kishor nor Sh. Rajinder Singh have completed continuous work for 240 days in any calendar year.

It is further stressed that no representation was made in this respect by any of the workmen because copy of representation is not on record. It was also pointed out that duty hours of these workmen were 3-4 per day.

Moreover recommendation made for their regularization is already been turned down by officers of department at Dehradun. On the basis of aforesaid contentions it was stressed by Ld. A/R for management that workmen /claimants are not entitled for regularization.

In the light of contention and counter contentions I perused the pleadings in statement of claim, written statement, rejoinder and evidence of the parties.

Perusal of evidence on record makes it crystal clear that workman Sh. Rajinder Singh joined as casual worker on 01.09.1992 and workman Sh. Kamal Kishor joined

as casual worker on 01.01.1993 since than they are working continuously. They have completed the work for 240 day continuously in each calendar year. Officers of department wrote letters to superior officers for making them (Sh. Rajinder Singh and Sh. Kamal Kishor) regularized. Their juniors Smt. Aarti Devi and Sh. Manoj have already been regularized. Photocopies of letters written by officers of department are on record. On the basis of which Judicial notice provided u/s 56 & 57 Indian Evidence Act can be taken . Especially in the instant case in which Ld. A/R for the management could not dare to rebut the evidence of workmen. Although Ld. A/R for the management challenged the claim of workmen on the ground that they made no representation for making them regularized.

It is relevant to mention here that there is no provision in ID Act which makes necessary to give representation for regularization of workmen by workmen. So aforesaid contentions raised on the behalf of Ld. A/R for the management is of no avail to him. Ld. A/R for the management again made futile attempt by way of raising that recommendation made by departmental officers for regularization of workmen Sh. Rajinder Singh and Sh. Kamal Kishor has been turned down by officers of department at Dehradun. This Contention is also of no avail to management because juniors workmen Smt. Aarti Devi and Sh. Manoj have been regularized and workmen Sh. Rajinder Singh and Sh. Kamal Kishor have been ignored for regularization without plausible reason.

Management was duty bound to show through its evidence that case is workmen Sh. Rajinder Singh and Sh. Kamal Kishor was distinguishable from the case of workmen Sh. Rajinder Singh and Sh. Kamal Kishor due to which workmen could not be regularized but there is no such evidence of Management.

It is also relevant to mention here that MW1 produced on behalf of management could not discharge the burden as provided u/s 102 Indian Evidence Act . So in want of evidence of onus probandi there is no option to this Tribunal except to decide the question of determination No.1 mentioned in schedule of reference in favour of workmen and against management. Which is accordingly decided.

As question of determination mentioned in schedule of reference has been decided in favour of workmen and against management. So the workmen are entitled for relief of regularization since 01.01.1998 as claimed and proved by workmen.

Reference is accordingly decided in favour of workmen Sh. Rajinder Singh and Sh. Kamal Kishor and against management. Award is accordingly passed.

Management is directed to regularize workmen namely Sh. Rajinder Singh and Sh. Kamal Kishor since

01.01.1998 months after within 2 months after expiry of period of available remedy against this award.

Dated:-28/08/2014

HARBANSH KUMAR SAXENA, Presiding Officer

नई दिल्ली, 25 सितम्बर, 2014

**का.आ. 2669.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार रजिस्ट्रार IIT रुर्की के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, दिल्ली, के पंचाट (संदर्भ सं. 153/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 22.09.2014 को प्राप्त हुआ था।

[सं. एल-42011/45/2012-आईआर (डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 25th September, 2014

**S.O. 2669.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 153/2012) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 2, Delhi now as shown in the Annexure, in the Industrial Dispute between the management of the The Registrar, IIT, Roorkee and their workmen, which was received by the Central Government on 22.09.2014.

[No. L-42011/45/2012-IR (DU)]

P. K. VENUGOPAL, Section Officer

#### ANNEXURE

#### CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, KARKARDOOMA COURT COMPLEX, DELHI

**Present:** Shri Harbansh Kumar Saxena, Presiding Officer

ID No. 153/12

Sh. Ashiq S/o Sh. Nazar, Genral Secreatary,  
IIT Roorkee Karamchari Union, IIT,  
Roorkee, Haridwar, Uttrakhand,

Versus

The Registrar,  
IIT, Roorkee, Haridwar

No DISPUTE AWARD

The Central Government in the Ministry of Labour vide notification No L-42011/45/2012-IR(DU) dated 19.10.2012 referred the following Industrial Dispute to this tribunal for adjudication :-

“Whether the action of the management of IIT Roorkee in not regularizing the services of

Sh. Ashiq S/o Nazar, Masson despite rendering service for more than 30 years continuously is justified? If not, what relief the workman is entitled to ?”

On 26.10.2012 reference was received in this tribunal. Which was register as I.D No. 153/2012 and claimant was called upon to file claim statement with in fifteen days from date of service of notice. Which was required to be accompanied with relevant documents and list of witnesses.

Several opportunities given to workman as well as management but neither workman nor management filed claim statement / Response to the reference.

In this background there is no option to this tribunal except to pass No Dispute Award because parties are not interested to file their respective pleadings.

On the basis of which none of the parte can be directed to adduce its evidence.

No Dispute Award is accordingly passed.

Dated:-09/09/2014

HARBANSH KUMAR SAXENA, Presiding Officer

नई दिल्ली, 25 सितम्बर, 2014

**का.आ. 2670.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार जनरल मैनेजर, बी एच ई एल, रानीपुर के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, दिल्ली, के पंचाट (संदर्भ सं. 108/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 22.09.2014 को प्राप्त हुआ था।

[सं. एल-42011/205/2011-आईआर (डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 25th September, 2014

**S.O. 2670.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 108/2012) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 2, Delhi now as shown in the Annexure, in the Industrial Dispute between the employers in relations to the management of the General Manager, BHEL, Ranipur and their workmen, which was received by the Central Government on 22.09.2014.

[No. L-42011/205/2011-IR (DU)]

P. K. VENUGOPAL, Section Officer

#### ANNEXURE

#### CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT - II, KARKARDOOMA COURT COMPLEX, DELHI

**Present:** Shri Harbansh Kumar Saxena, Presiding Officer

**ID No.108/2012**

Sh. Ranvir Singh,  
The General Secy.,  
BHEL, Heavy Electrical Equipment Plant,  
Ranipur, Haridwar

Versus

The General Manager,  
BHEL, Heavy Electrical Equipment Plant,  
Ranipur, Haridwar

**NO DISPUTE AWARD**

The Central Government in the Ministry of Labour vide notification No L-42011/205/2011-IR(DU) dated 24.02.2012 referred the following Industrial Dispute to this Tribunal for adjudication :-

“Whether the action of the management of BHEL, Ranipur, Haridwar in denying stepping up of Basic Pay and consequent benefits due to promotion from back date to Shri Ranvir Singh S/o Late Sh. Hoshiar Singh, Technician w.e.f. 25.06.1995 is legal & justified? What relief the workman is entitled to?”

On 16.03.2012 reference was received in this Tribunal. Which was register as I.D No. 108/2012 and claimant was called upon to file claim statement with in fifteen days from date of service of notice. Which was required to be accompanied with relevant documents and list of witnesses.

After service of notice workman/claimant Sh. Ranvir Singh not filed claim statement but management in response to reference filed response wherein it mentioned as follows:-

**RESPECTFULLY SHOWETH:-**

At the outset is submitted that, as the claimant has not filed any statement of claim before this Hon'ble Court, the respondent is hereby preferring brief reply to the reference order and keeps it right reserved to file detailed reply if the occasion so arises.

**PRELIMINARY OBJECTION**

1. THAT M/s . Bharat Heavy Electricals Ltd. is a duly incorporated company and has legal status only in the above said incorporated name. The reference order cites the employer as BHEL which is not correct name. The reference is therefore, invalid and without jurisdiction.

2. THAT the reference order itself conveys that the present terms of reference/ present dispute cannot be the subject matter of an individual dispute as envisaged u/s 2A of the Industrial Disputes Act and the same can be raised only as collective dispute u/s 2(k) of the ID. Act Neither the present dispute of Ranvir Singh has the espousal of requisite number of workmen of the

respondent establishment nor the reference order conveys any such espousal.

Hence the reference is not maintainable and liable to be rejected on this ground alone.

3. THAT Sh. Ranvir Singh was promoted from Artisan Gr-I ( Grinder) to Technician vide office order no. PWX/OC/1584189 dated 29.08.1997 and present the dispute raised by the claimant after more than 15-16 years is stale and suffers from inordinate delay is prejudicial to the respondent in effectively putting forward its defence. Hence reference is invalid and without jurisdiction.

4. THAT charge sheet vide letter reference no. GM(F):7(4):95:163 dated 03.06.1995 was issued to Sh. Ranvir Singh for misconduct under clause 20( C) of Standing Orders wherein he was charged for “Fraud & Dishonesty” and during the disciplinary proceedings charges were partially proved against him but taking a lenient view said Sh. Ranvir Singh was let off with stern warning not to repeat such misconduct vide letter no. FM/7(4) 233 dated 24.04.1997.

It is further submitted that earlier also (i.e prior to aforesaid chargesheet ) Sh. Ranvir was charged with “Fraud & Dishonesty” under the abovesaid clause 20(C) vide letter number PR/SU/ Conf 2/4 dated 04.04.1984 and the said charges were admitted by Sh. Ranvir Singh and he tendered unconditional apology thereof as well. He was awarded punishment of two years demotion to the lower post on his said misconduct.

As aforesaid Sh. Ranvir Singh was promoted on notional basis from Artisan Gr-I (Grinder) to Technician vide office order no. PWX/OC/1584189 dated 29.08.1997 w.e.f 26.05.1995 on closure of the abovesaid disciplinary proceedings initiated vide chargesheet dated 03.06.1995. The case of Sh. Ranvir Singh was processed under sealed cover due to the pendency of the abovesaid disciplinary proceedings . Neither there was any disparity or pay anomaly in the case of Sh. Ranvir Singh nor he can allege any disparity or anomaly in pay. It is to be added here that Sh. Ranvir Singh has been ceased to be the employee of respondent since 24.04.2010.

5. THAT no demand relating to the present term of reference has been raised and rejected. Hence the reference is without jurisdiction and not maintainable.

6. THAT the reference is not maintainable under law as it has been made mechanically, without application of mind by the Appropriate Government.

**ON MERITS:-**

As aforesaid charge sheet vide letter reference no. GM (F) :7(4) :95:163 dated 03.06.1995 was issued to Sh. Ranvir Singh for misconduct under clause 20 ( C) of Standing Orders wherein he was charged for “Frauds & Dishonesty” and during the disciplinary proceedings charges were partially proved against him but taking a

lenient view said Sh. Ranvir Singh was let off with stern warning not to repeat such misconduct vide letter no. FM/7(4)/233 dated 24.04.1997.

It is further submitted that earlier also (i.e. prior to aforesaid chargesheet) Sh. Ranvir was charged with "Fraud & Dishonesty" under the abovesaid clause 20(C) vide letter number PR/SU/Conf 2/4 dated 04.04.1984 and the said charges were admitted by Sh. Ranvir Singh and he tendered unconditional apology thereof as well. He was awarded punishment of two years demotion to the lower post on his said misconduct.

As aforesaid Sh. Ranvir Singh was promoted on notional basis from Artisan Gr-I (Grinder) to Technician vide office no PWX/OC/1584189 dated 29.08.1997 w.e.f 26.05.1995 on closure of the abovesaid disciplinary proceedings initiated vide chargesheet dated 03.06.1995. The case of Sh. Ranvir Singh was processed under sealed cover due to the pendency of the abovesaid disciplinary proceedings. Neither there was any disparity or pay anomaly in the case of Sh. Ranvir Singh nor he can allege any disparity or anomaly in pay. It is to be added here that Sh. Ranvir Singh has been ceased to the employee of respondent since 24.04.2010.

On the basis of non-interestedness of workman. The proceeding of this case is not liable to be proceeded further. Hence proceedings of the case are liable to be dropped and no dispute award is liable to be passed.

No Dispute Award is accordingly passed.

Dated:-03/09/2014

HARBANSH KUMAR SAXENA, Presiding Officer

नई दिल्ली, 29 सितम्बर, 2014

**का.आ. 2671.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कोइम्बटोर स्पिनिंग एंड वीविंग मिल्स एंड आथर्स औद्योगिक अधिकरण एवं श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ सं. 61/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24.09.2014 को प्राप्त हुआ था।

[सं. एल-42011/06/2012-आईआर (डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 29th September, 2014

**S.O. 2671.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 61/2012) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 2, Chennai now as shown in the Annexure, in the Industrial Dispute between the management of the Coimbatore Spinning and Weaving Mills & Others and their workmen, which was received by the Central Government on 24.09.2014.

[No. L-42011/06/2012-IR (DU)]

P. K. VENUGOPAL, Section Officer

## ANNEXURE

### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Thursday, the 18th September, 2014

**Present :** K. P. Prasanna Kumari, Presiding Officer

#### Industrial Dispute No. 61/2012

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), Between the Management of Coimbatore Spinning and Weaving Mills and Four Others and their workman)

#### Between:

1. The General Secretary : 1st Party/1st Petitioner Union  
Kovai Mavatta Panchalai  
anna Thozhilalar Sangam  
(ATP), Grey Town  
Coimbatore-641008
2. The General Secretary : 1st Party/2nd Petitioner Union  
Kovai Periyar Districts  
Dravida Panchalai  
Thozhilalar Munnetra  
Sangam (MLF)  
VKK Menon Road,  
Siddapudur,  
Coimbatore-641044
3. The General Secretary : 1st Party/3rd Petitioner Union  
Coimbatore District  
Textile Workers Union  
(HMS)  
2212, Trichy Road,  
Singanallur,  
Coimbatore-641005
4. The General Secretary : 1st Party/4<sup>th</sup> Petitioner Union  
Thamizhaga Panchalai  
Thozhilalar Sangam  
(BMS)  
Sathyamangalam Road,  
Ganapathy,  
Coimbatore-641006
5. The General Secretary : 1st Party/5<sup>th</sup> Petitioner Union  
Coimbatore District Mill  
Workers Union (AITUC)  
99, Rangam Street,  
Kattoor,  
Coimbatore-641009

AND



1. The General Manager : 2<sup>nd</sup> Party/1<sup>st</sup> Respondent  
Coimbatore Spinning  
and Weaving Mills  
Krishnaswamy  
Mudaliar Road  
Post Box No. 24  
Coimbatore-1
2. The General Manager : 2<sup>nd</sup> Party/2<sup>nd</sup> Respondent  
Coimbatore Murugan  
Mills,  
Mettupalayam Road  
P. Box No. 7004  
Coimbatore
3. The General Manager : 2<sup>nd</sup> Party/3<sup>rd</sup> Respondent  
Sri Rangavilas G.S.  
& W. Mills,  
333 Avanashi Road  
P. O. Box No. 1604  
Peelamedu  
Coimbatore-4
4. The General Manager : 2<sup>nd</sup> Party/4<sup>th</sup> Respondent  
Pankaja Mills  
30 Pankaja Mills Road  
P.O. Box No. 7109  
Coimbatore-45
5. The General Manager : 2<sup>nd</sup> Party/5<sup>th</sup> Respondent  
Cambodia Mills,  
Post Box No. 3504  
Ondipudur  
Coimbatore-16

#### Appearance:

For the 1<sup>st</sup> Party/1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> & 5<sup>th</sup> Petitioner Union: Sri K. Krishnamurthi & R. Gokulraj, Advocates

For the 2<sup>nd</sup> Party/1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> & 5<sup>th</sup> Respondent: M/s. T.S. Gopalan & Co., Advocates

#### AWARD

The Central Government, Ministry of Labour & Employment vide its Order No. L-42011/06/2012-IR(DU) dated 04.09.2012 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is :

“Whether the action of NTC Mill management, Southern Region, Coimbatore for not inviting unrecognized unions for discussion of wage revision is justifiable or not? If not, to what relief the workmen are entitled to?”

2. On receipt of the Industrial Dispute this Tribunal has numbered it as ID 61/2012 and issued notices to both sides. Both sides have entered appearance through their counsel. The Second Petitioner and Respondent have filed their claim and counter statement respectively. The

Second Petitioner has filed a rejoinder in reply to the Counter Statement.

3. The averments in the Claim Statement filed by the Second Petitioner in brief are these:

The Second Petitioner has a large membership among the textile workers in Coimbatore District. The textile mills in Coimbatore were principally owned by private employers. The mills were taken over by the National Textile Corporation due to mismanagement of some of the mill owners. The issue of recognition of Trade Unions with regard to National Textile Corporation mills came up for consideration before the Madras High Court in Writ Petition No. 1440/2010. The High Court ordered that recognition in respect of mills of National Textile Corporation has to be decided through a secret ballot and Unions who have got 10% membership in the secret ballot have to be recognized. A secret ballot was held and the Second Petitioner obtained about 7.6% of the votes in Murugan Mills, Pankaja Mills, CS&W Mills, Cambodia Mills, Pioneer Mills and Kaleeswara (P) Mills. In the Rangavilas Mills of which the Third Respondent is the Manager, the Second Petitioner has got 85 votes out of 505. Regarding wage issue of Rangavilas Mills, CITU having membership of 33 and INTUC having membership of only 6 were called for negotiation. However, the Second Petitioner having substantial membership was not called for negotiation. When INTUC and CITU were called for negotiation, the Management of National Textile Mills ought not to have omitted the Second Petitioner from negotiation. Based on the negotiation with minority unions, the Management had entered into a settlement under Section-18(1) of the ID Act. Subsequently, this was taken for conversion as under Section-12(3) of ID Act and this was done on 04.09.2012. An award may be passed holding that the action of National Textile Mills Management, Southern Region in not inviting the Petitioner Unions for discussion in respect of workers of Rangavilas G.S.&W Mills is unjustified and consequently hold that the petitioners are entitled to have their dispute for wage revision referred and adjudicated.

4. The petitioners other than the Second Petitioner did not file any Claim Statement.

5. The Respondents have filed Counter Statement contending as follows :

The action of the Southern Regional Office of National Textile Corporation Ltd., Coimbatore is the subject matter of reference and therefore the Southern Regional Office of the Corporation should alone be the Respondent and not the mills constituting the Southern Region. As far as the workmen of the mills functioning under the control of Southern Regional Office of the NTC Coimbatore are concerned, negotiation on wages, allowances and other service conditions are dealt with

only on a common basis covering all the workmen in the seven textile mills. It is illogical to make each of the mills mentioned in the order of reference as separate Respondent. Recognition of Trade Union as a bargaining agent of the workmen of an establishment is not governed by any statute in Tamil Nadu. Recognition of a Trade Union is left to the discretion of the employer or the management of the establishment. It is not permissible for any union to claim recognition as a matter of right. Merely because an Industrial Dispute is raised by a Trade Union, the employer need not invite the union for negotiation at bipartite level. In such case the option available to the unrecognized union is to seek the intervention of the conciliation machinery and if it fails, to take the dispute for industrial adjudication. The issue referred for adjudication is outside the purview of the ID Act. The Respondents have been adhering to the directions given by the Supreme Court and the High Court regarding how the bargaining agent should be selected for negotiation. The issue of wages, allowances and other service conditions are uniformly the same for all the textile mills. There is no question of each unit of 7 Regional Office of NTC being treated separately for assessing the representative character of the Union. The Unions cannot be invited for discussions based on the membership in each textile mill coming under the control of Southern Regional Office. The workmen employed in the seven mills under NTC Southern Region constitute one single body of workmen. The Management will deal with only the Trade Union which secures the requisite percentage of membership from among all the workmen in the seven units in Tamil Nadu. The petitioners are not entitled to any relief.

6. The Respondents have also filed an additional Counter Statement as given below, in brief:

On 08.01.2009 a Long Term Settlement was made on wages and other service conditions and this settlement was to remain in force for 5 years commencing from 01.01.2008 to 31.12.2012. It was agreed during the tenure of the settlement that they would not raise any demand which would result in additional financial implication to the Management. The question of recognized unions as a bargaining agent was the subject matter of two Writ Petitions before the High Court. As directed by the High Court, elections for recognized Trade Unions was conducted on 08.12.2010 and four unions were elected and were declared as the recognized Trade Unions. Since the petitioners were not declared as recognized unions, the Respondent stopped deducting subscription from them. This was challenged by a Writ Petition and the writ was disposed directing the Respondent to continue to deduct subscriptions and remit it to the Petitioner Unions. On 15.06.2011 the Petitioner Unions made a demand for increase in wages. Because of the currency of the settlement dated 08.01.2009 and also because the

Petitioner Unions were not recognized, the Respondents refused to countenance the demand of the Unions. It is subsequently, the dispute has been raised.

7. The Second Petitioner has filed a rejoinder denying the averments in the Counter Statement and also reiterating the contentions in the Claim Statement.

8. The evidence in the case consists of WW1 and documents marked as Ext.W1 to Ext.W16 and Ext.M1 to Ext.M4.

**9. The points for consideration are:**

- (i) Whether the action of NTC Mill Management, Southern Region, Coimbatore in not inviting unrecognized unions for discussion of wage revision is justifiable or not?
- (ii) What is the relief to which the petitioners are entitled?

**The Points**

10. Though the names of five Petitioners are shown in the petition, only the Second Petitioner has filed Claim statement. The relief sought in the Claim Statement is to pass an award that the action of the National Textile Mills Management, Southern Region in not inviting the petitioners unions for discussion in respect of the issue of workers of Sri Rangavilas G.S.&W Mills is unjustified and also to hold that the petitioners are entitled to have their dispute for wage revision referred and adjudicated. The schedule of reference, as could be seen is, whether the action of NTC Mill Management, Southern Region, Coimbatore in not inviting unrecognized unions for discussion of wage revision is justifiable or not. It could be seen that, though as seen from the schedule of reference, the grievance raised is against NTC Mill Management, Southern Region, Coimbatore, this entity is not a party to the Claim Statement and its name does not find a place in the schedule of reference also. Again, it could be seen from the prayer in the Claim Statement that apart from the matter of reference by the Government i.e. the issue of not inviting unrecognized unions for discussion of wage revision, the Second Petitioner is also claiming a relief of declaration that the petitioners are entitled to have their dispute for wage revision referred and adjudicated.

11. Even though an additional Claim i.e. something more than the subject matter of reference has been put forth in the Claim Statement, during trial, the Second Petitioner has confined its claim in the matter of not inviting it for discussion of wage revision. At the time of the argument the counsel for the Second Petitioner has also stated that the Second Petitioner is confining its claim against the Third Respondent only.

12. According to the counsel for the petitioners the First Petitioner has got 66 out of 505 votes and the Second

Petitioner has got 85 out of 505 votes in the election held by way of secret ballot in Rangavilas Mills. This is more than 10% which is required for recognition. According to the counsel when these two petitioners have got votes above 10% on election it was incumbent upon the Third Respondent to invite them for a discussion on the demands raised by them. The contention that is raised by the Respondents is that negotiation on wages, allowances and other service conditions are dealt with only on a common basis covering all the workmen in the seven textile mills coming under NTC, Southern Region. Each unit of the NTC Southern Region cannot be treated separately for assessing the representative character of the Union and so they cannot be invited for discussion based on membership in each textile mill coming under the control of Southern Regional Office of NTC also.

13. Ext.M1 is the order of the High Court of Madras in Writ Petition Nos. 1440 and 1530 of 2010. In this the High Court has directed the NTC to conduct election in all the seven textile mills in Tamil Nadu for the purpose of granting recognition to the unions. Ext.M2 is the result of election conducted. Ext.M3 (series) are the letters of recognition issued by NTC Ltd. to the four unions LPF, NDLF, CITU and INTUC. Recognition seems to have been given on the basis of the consolidated result of election in all the mills. When such recognition was given, the Second Petitioner as well as other petitioners failed to get recognition. At the same time, the First and Second Petitioner seem to have obtained more than 10% votes in the particular unit i.e. in Sri Rangavilas Mills. The claim is that because they have obtained votes above 10% they should have been called for negotiation on the basis of the demands that were raised by them as per Ext.W5. During the pendency of this dispute other Writ Petitions were also filed before the High Court in the matter of election of the unions. Ext.W16 is the order in two contempt petitions filed by the High Court alleging that though the direction in the previous Writ Petitions was to recognize unions at unit level, this was not done but declaration of the result was made only at the centralized level. The Management submitted that the mistake would be corrected and declaration of the result could be produced. On the basis of this the contempt petitions were posted for producing the declaration of the result at unit level. The Election Officer later filed an affidavit to the effect that the order has been complied with. On the basis of this affidavit the contempt petitions were closed on 25.02.2014. However, there were two more Writ Petitions in the matter. On 26.03.2014 the Writ Petitions were allowed and the earlier notification for election was set aside. The National Textile Corporation Ltd. and the Election Officer were directed to issue fresh election notification to conduct election at unit level and complete the election process within a period 6 weeks. Any document regarding the conduct of the election subsequently has not been produced.

14. It has been pointed out by the counsel for the Respondent that the petitioners have raised new demands during the currency of a Bipartite Settlement. By the existing settlement the petitioners have undertaken not to raise any new demands with financial implications during the currency of the same. According to the Respondent's counsel, for this reason and also because the petitioners were not recognized unions, there was no necessity to invite them for negotiations.

15. It has been also pointed out by the counsel for the Respondent that the issue that is referred has nothing to do with the issue that has been raised. Ext.W5 is the copy of the minutes of the joint action committee meeting held on 04.06.2011 raising certain demands. In Ext.W8 the reply submitted by the Management to the Assistant Labour Commissioner, there is reference to these demands. The number of the letter by the Asstt. Labour Commissioner to the Management also is referred. This number 8/82/2011 dated 28.07.2011 is what is referred to in Ext.W10 the reply given by Sri Rangavilas Mills to the Asstt. Labour Commissioner also. Ext.W11 is the rejoinder statement filed by the Unions before the Asstt. Labour Commissioner in which also the same number is referred to. This is the number given at the bottom of the reference order as that of the letter of Asstt. Labour Commissioner. So it is clear that the matter that came up for consideration before the Asstt. Labour Commissioner is the demand of wage revision and other reliefs to the workers and not the issue of failure to invite the unrecognized unions for discussion.

16. In any case, can an issue of failure of an employer to invite unrecognized union for discussion be a matter for adjudication before this Tribunal? The stand of the Respondent is that recognition of Trade Union as a bargaining agent is the discretion of the employer of the management of the establishment. The counsel for the Respondent has referred to the observation of the Madras High Court in the decision in POWER GRID NATIONAL WORKERS UNION VS. POWER GRID CORPORATION OF INDIA reported in 1998 3 LLN 399 where it is stated that the agreement fixing the eligibility for participation of Trade Unions in the proposed election is not governed by any statute nor is the employer exercising any statutory function with regard to the said subject and interference under Article-226 of the constitution is not warranted in view of this.

17. The High Court did not state in the above decision whether recognition of a Trade Union is an Industrial Dispute or not. The counsel for the petitioner has referred to a decision of the Kerala High Court supported by none other than the eminent jurist Lord Jenning in this respect. Lord Jenning has decided the case in 1960 in the

background that the union was not permitted to sponsor the cause of its two members who were dismissed from service by the employer. He has observed that when the difference is connected with the employment, non-employment, the terms of employment or with the conditions of labour of any person it is an industrial dispute. It was on the basis of such reasoning the dictum was laid. In the Kerala decision in T.C.C. THOZHILALI UNION VS. T.C.C. LTD. reported in 1988 1 LLJ 425, relying upon the decision of Lord Jennings it has been held that when the company refuses to recognize the union as a representative of the union members who are in the employment of the company, in the discussions and negotiation relating to Long Term Settlement affecting their terms of employment and conditions of labour the dispute is an industrial dispute as defined in Section-2A of the ID Act.

18. It is on the basis of the above decision the counsel for the petitioner has argued that the second petitioner union should have been invited for negotiation since it is having substantial number of workers and is having representative capacity and is entitled to negotiate on behalf of the workmen who are its members. However, in the same decision, it has been held that recognition by an employer of a Trade Union as a representative of its members and as a bargaining agent is a matter of volition on the part of the employer. A Trade Union has neither common law right nor statutory right which enables and entitles it to compel an employer to give recognition to it as the bargaining agent of its members. Since it has no such common law right a recognition dispute cannot be said to be one emanating from and emerging out of any right under the general common law. Thus it is clear that it is the discretion of the employer to recognize the Trade Union. So there cannot be an order directing the employer to invite the union for negotiation. As pointed out on behalf of the Respondent, the unions were to seek intervention of the conciliation machinery on their demands rather than making a demand for invitation for negotiation. I find that the petitioners are not entitled to any relief. The reference is answered against the petitioners.

An award is passed accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 18<sup>th</sup> September, 2014)

K. P. PRASANNA KUMARI, Presiding Officer

#### Witnesses Examined:

For the 1<sup>st</sup> Party/ : WW1, Sri S.  
Petitioner Union Doraisamy  
For the 2<sup>nd</sup> Party/Management : None

#### Documents Marked :

##### On the petitioner's side

Ex.No.	Date	Description
Ex.W1	05.09.1969	Settlement entered into between the Managements of Textile Mills in Coimbatore and various unions
Ex.W2	09.03.1972	Settlement entered into between the Managements of Textile Mills in Coimbatore and various unions
Ex.W3	30.05.1972	Proceedings of the Commissioner of Labour, Madras
Ex.W4	12.03.1993	Settlement entered into between the Management of Sri Rangavilas Mills and various unions including the Petitioner Union
Ex.W5	04.06.2011	Resolution passed by the Kovai Periyar District Textiles Mill Works Committee Joint Action Committee
Ex.W6	14.06.2011	Order of the Honourable High Court of Madras in Writ Petition No. 6334 of 2011
Ex.W7	15.06.2011	Petition submitted by the Petitioner Unions to the Assistant Commissioner of Labour (Central) Madurai raising the Management and National Textile Corporation Mills with the Charter of Demands submitted by the Petitioner Union to the Management
Ex.W8	24.08.2011	Reply submitted by the Management of National Textile Corporation to the Assistant Commissioner of Labour (Central) Madurai
Ex.W9	12.09.2011	Reply submitted by the Management of Pankaja Mills before the Assistant Commissioner of Labour (Central) Madurai
Ex.W10	13.09.2011	Reply submitted by the Management of Sri Rangavilas G.S. & W. Mills before the Assistant Commissioner of Labour (Central) Madurai



Ex.W11 12.10.2011	Rejoinder Statement filed by the Petitioners Union before the Assistant Commissioner of Labour (Central), Madurai			Mills and LPF Union and INTUC
		Ex.W16 08.10.2013		Order of the Honourable Madras High Court in Contempt Petition No. 1571 of 2010 and 155 of 2011
Ex.W12 09.08.2012	Letter of objections given by the Petitioner Union and the other unions to the Assistant Commissioner of Labour (Central), Madurai (Camp Coimbatore)			
		<b>On the Management's side      Description</b>		
		Ex.M1 02.09.2010		Order of Hon'ble High Court of Madras in WP 1440 and 1530 of 2010 in MP. No. 1 & 2 of 2010
Ex.W13 09.08.2012	Petition given by the Petitioner Union and other unions to the Assistant Commissioner of Labour (Central), Madurai	Ex.M2 19.12.2010		Result of election conducted for selection of representatives for the workmen of NTC Mills in Tamil Nadu
Ex.W14 15.08.2012	Settlement entered into between the management of Sri Rangavilas Mills and the LPF Union and INTUC Union under Section 18(1) of the Industrial Disputes Act, 1947	Ex.M3 19.12.2010		Letter of recognition issued by NTC Ltd. (Southern/Regional Office to each of the 4 Unions (LPF), (NDLF), (CITU) & (INTUC)
Ex.W15 04.09.2012	Settlement entered into under Section 12(3) of the Industrial Dispute Act, 1947 between the Management of Sri Rangavilas	Ex.M4 08.01.2009		Settlement under Section 18(1)